

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

B.P.J. by her next friend and)
mother, HEATHER JACKSON,)
)
Plaintiff,)
)
vs.) Civil Action No.
) 2:21-cv-00316
WEST VIRGINIA STATE BOARD OF)
EDUCATION, HARRISON COUNTY BOARD)
OF EDUCATION, WEST VIRGINIA)
SECONDARY SCHOOL ACTIVITIES)
COMMISSION, W. CLAYTON BURCH in)
his official capacity as State)
Superintendent, DORA STUTLER in)
her official capacity as)
Harrison County Superintendent,)
and THE STATE OF WEST VIRGINIA,)
)
Defendants.)
)
and)
)
LAINEY ARMISTEAD,)
)
Defendant-Intervenor.)
)
_____)

VIRTUAL VIDEOCONFERENCE VIDEO-RECORDED
DEPOSITION OF MICHELE BLATT
Monday, February 14, 2022
Remotely Testifying from Charleston, West Virginia

Reported By: Hanna Kim, CLR, CSR No. 13083
Job No. 5079505

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Virtual videoconference video-recorded
deposition of MICHELE BLATT, taken pursuant to the
stipulations of counsel thereof, taken on behalf
of the Plaintiff, on Monday, February 14, 2022,
remotely testifying from Charleston, West
Virginia, before Hanna Kim, CLR, Certified
Shorthand Reporter, No. 13083.

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23 DAVE HALVORSON, Videographer

24
25
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WITNESS: MICHELE BLATT

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1 Remotely Testifying from Charleston, West Virginia

2 Monday, February 14, 2022; 12:09 p.m., EST

3 --oOo--

4 THE VIDEOGRAPHER: Okay. Good afternoon.

5 We are on the record at 12:09 p.m. on 12:09:56
6 February 14th, 2022.

7 This is Media Unit 1 in the video-recorded
8 deposition of Michele Blatt, in the matter of
9 B.P.J. and Heather Jackson versus West Virginia
10 State Board of Education, et al. 12:10:15

11 It's filed in the Southern District of
12 West Virginia in -- in the Charleston Division.
13 The case number is 2:21-cv-00316.

14 This deposition is being held virtually.

15 My name is Dave Halvorson. I'm the 12:10:31
16 videographer here from Veritext. And I'm here with
17 the court reporter, Hanna Kim, also from Veritext.

18 Counsel, can you please all identify
19 yourselves so the witness can be sworn in.

20 MS. VEROFF: Good morning. This is Julie 12:10:44
21 Veroff from Cooley LLP. I'm an attorney
22 representing Plaintiff B.P.J.

23 MS. HARTNETT: This is Kathleen Hartnett
24 from Cooley, also for Plaintiff.

25 MR. BARR: Andrew Barr, also from Cooley 12:11:02

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1 and also for Plaintiff.

2 MS. KANG: Katelyn Kang, also from Cooley,
3 also for Plaintiff.

4 MS. REINHARDT: Elizabeth Reinhardt, also
5 from Cooley, also for Plaintiff. 12:11:19

6 MS. HELSTROM: Zoe Helstrom from Cooley
7 for Plaintiff.

8 MS. STARK: Loree Stark with the ACLU of
9 West Virginia for Plaintiff.

10 MR. WARD: Nicholas Ward with the ACLU of 12:11:29
11 West Virginia on behalf of Plaintiff.

12 MR. BLOCK: Josh Block from the ACLU on
13 behalf of Plaintiff.

14 MS. SWAMINATHAN: Sruti Swaminathan from
15 Lambda Legal on behalf of Plaintiff. 12:11:40

16 MS. SMITH-CARRINGTON: Avatara
17 Smith-Carrington from Lambda Legal on behalf of
18 Plaintiff.

19 MS. MORGAN: This is Kelly Morgan on
20 behalf of the West Virginia Board of Education and 12:12:01
21 Superintendent Clayton Burch, as well as Heather
22 Hutchens, as general counsel for the West Virginia
23 State Board.

24 And on Zoom as well is Kristen Hammond.

25 MR. TRYON: This is David Tryon on behalf 12:12:19

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1 of the State of West Virginia.

2 Curtis Capehart is also on the line on
3 behalf of the State.

4 MS. DENIKER: Susan Deniker on behalf of
5 Harrison County Board of Education and 12:12:36
6 Superintendent Dora Stutler.

7 MS. GREEN: Roberta Green here on behalf
8 of West Virginia Secondary School Activities
9 Commission.

10 MS. FRAMPTON: Hal Frampton from Alliance 12:12:48
11 Defending Freedom for the Defendant-Intervenor
12 Lainey Armistead.

13 Also on Zoom for the intervenor are Katie
14 Kelly and Timothy Ducar.

15 THE COURT REPORTER: I'm going to 12:13:02
16 administer the oath to the witness.

17
18 MICHELE BLATT,
19 having been duly administered an oath over
20 videoconference as stipulated by all counsel, was
21 examined and testified as follows:

22
23 THE VIDEOGRAPHER: Okay. You may proceed.

24 ///

25 ///

EXAMINATION

BY MS. VEROFF:

Q. Good morning, Ms. Blatt. Thank you so much for being here.

Good afternoon in West Virginia. 12:13:39

How are you doing today?

A. Good. Thank you.

Q. Yep.

Would you mind stating and spelling your name for the record, please. 12:13:46

A. Michele Blatt. It's M-I-C-H-E-L-E, B-L-A-T-T.

Q. Thank you. And is it okay to refer to you as "Ms. Blatt," or would you prefer a different salutation? 12:14:00

A. Michele's fine.

Q. Michele. Okay. Thank you.

And so before we dive into questions, I have just a few keeping housekeeping items to go through with you. 12:14:10

So the oath you've just taken today is the same oath as if you were testifying in a courtroom. You must testify truthfully and not leave out any important fact.

Is there any reason you cannot testify 12:14:19

1 truthfully today?

2 A. No.

3 Q. Please give verbal answers to my
4 questions. Nonverbal answers, like nodding or
5 shaking your head, can't be taken down by the 12:14:28
6 court reporter.

7 If you don't understand a question, please
8 just let me know, and I'd be happy to repeat it or
9 to rephrase.

10 If you answer, I'll assume you understood. 12:14:38

11 And just to be clear, when I ask
12 questions, I'm not seeking confidential
13 communications that you had with your attorney.

14 And, lastly, to enable the court reporter
15 to take down a clean record, we should do our best 12:14:51
16 to avoid speaking at the same time.

17 So please allow me to try and finish a --
18 a question before you answer, and I'll do my very
19 best not to speak over you.

20 Does all that sound okay? 12:15:04

21 A. Yes.

22 Q. Okay. Great.

23 And just a few shorthands that I'm
24 planning to use through today's deposition. I'm
25 going to use the shorthand "State Board" when 12:15:14

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1 referring to the West Virginia State Board of
2 Education.

3 Is that okay with you?

4 A. Yes.

5 Q. I'm also going to use "H.B. 3293" when 12:15:23
6 referring to House Bill 3293, which is codified at
7 West Virginia Code Section 18-2-25d.

8 Is that okay with you?

9 A. Yes.

10 Q. Great. 12:15:36

11 And during this deposition, I'm going to
12 have a few questions that use the terms
13 "cisgender" and "transgender."

14 And so for purposes of this deposition,
15 when I say the term "cisgender," what I mean is 12:15:47
16 someone's whose gender identity matches the sex
17 they were assigned at birth.

18 Does that make sense?

19 A. Yes.

20 Q. Great. 12:15:56

21 And for purposes of this deposition, when
22 I say "transgender," I mean someone whose gender
23 identity does not match the sex they were assigned
24 at birth.

25 Does that make sense? 12:16:07

1 A. Yes.

2 Q. Great.

3 And, lastly, when I say "B.P.J.," I'm
4 referring to the Plaintiff in this case.

5 Does that make sense? 12:16:14

6 A. Yes.

7 Q. Great.

8 So with all that out of the way, I want to
9 chat a little bit about your experience with
10 depositions and preparation for today's 12:16:23
11 deposition.

12 Have you ever had your deposition taken
13 before?

14 A. I have not.

15 Q. And have you ever testified at trial? 12:16:31

16 A. I have not.

17 Q. Well, hopefully this will be an easy and
18 pain-free first deposition experience.

19 Did you bring anything to today's
20 deposition? 12:16:44

21 A. I just have a copy of the House Bill 3293
22 that was codified.

23 Q. Great.

24 And do you have any notes or annotations
25 on that copy of House Bill 3293? 12:16:53

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1 A. No.

2 Q. And do you understand that you're here in
3 response to a 30(b)(6) deposition notice?

4 A. Yes.

5 Q. Do you know what a 30(b)(6) deposition is? 12:17:07

6 A. Yes. I just learned that Friday.

7 Q. Excellent.

8 And have you had a chance to review the
9 deposition notice?

10 A. Yes. 12:17:17

11 Q. Great.

12 And so you're familiar with a 12 topics
13 described in the notice?

14 A. Yes.

15 Q. Wonderful. 12:17:25

16 So if you'll please go into your "Marked
17 Exhibits" folder on Exhibit Share, you should see
18 Exhibit 15.

19 Please go ahead and open that exhibit, and
20 let me know when you have it open. 12:17:37

21 MS. MORGAN: We have it open.

22 MS. VEROFF: Wonderful.

23 (Blatt Deposition Exhibit 15 was marked
24 electronically.)

25 BY MS. VEROFF: 12:17:45

1 Q. So if you'll please scroll to page, I
2 believe it's 6 -- or maybe -- I'm sorry, page 4 of
3 the PDF, you'll see "Definitions." And if you
4 scroll to page 6, you'll see "Topics of
5 Examination." 12:17:58

6 Do you see that?

7 A. Yes.

8 THE COURT REPORTER: Counsel?

9 MS. VEROFF: Yes.

10 THE COURT REPORTER: I need to go off the 12:18:08
11 record for an audio issue, please.

12 THE VIDEOGRAPHER: All right.

13 We are going off the record. The time is
14 12:18 p.m.

15 (Off the record.) 12:18:32

16 THE VIDEOGRAPHER: All right.

17 We are back on the record at 12:28 p.m.

18 Go ahead.

19 MS. VEROFF: Great.

20 BY MS. VEROFF: 12:28:13

21 Q. Thank you, Ms. Blatt.

22 So we were talking about the -- the 12
23 topics in the notice of deposition. And I'd like
24 to start with Topic 1, which is "The organization
25 and structure of the State Board, including its 12:28:24

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1 employees, their positions, and the scope of their
2 responsibilities, including the role and
3 responsibilities of the State Superintendent."

4 Did I read that correctly?

5 A. Yes. 12:28:37

6 Q. What did you do to prepare for Topic 1?

7 A. I've just generally thought through the
8 process that we use and how our department and
9 State Board is organized.

10 Q. Did you review any documents? 12:28:53

11 A. No.

12 Q. And did you consult with anyone other than
13 your attorney?

14 A. No.

15 Q. Turning to Topic 2, "Your Policies, 12:29:04
16 Documents, and Communications concerning
17 rulemaking," did I read that correctly?

18 A. Yes.

19 Q. What did you do to prepare for Topic 2?

20 A. Again, just thought through the process 12:29:18
21 that we use here at the Department of Education.

22 Q. Did you consult any documents?

23 A. No.

24 Q. And did you consult any person other than
25 your attorney? 12:29:29

1 A. No.

2 Q. Looking at Topic 3, "Your Policies,
3 Documents, and Communications Concerning Your
4 control, supervision, or authority over school
5 athletics in West Virginia," did I read that 12:29:41
6 correctly?

7 A. Yes.

8 Q. What did you do to prepare for Topic 3?

9 A. Just reviewed the State Code regarding the
10 SSAC. 12:29:54

11 Q. And did you review any documents?

12 A. No.

13 Q. I'm sorry, I couldn't hear you. Did you
14 say "no"?

15 A. No, just the -- the State Code that 12:30:07
16 relates to the SSAC.

17 Q. Just the State Code. Great.

18 And did you consult with anyone other than
19 your attorney?

20 A. No. 12:30:16

21 MS. MORGAN: Let me just state that there
22 are more than just one attorney, so attorneys for
23 the State Board and Superintendent Burch.

24 BY MS. VEROFF:

25 Q. Did -- did you consult with any of your 12:30:30

1 attorneys -- or, I'm sorry, anyone other than your
2 attorneys?

3 A. No.

4 Q. Turning to Topic 4, "Your current and/or
5 expected role in implementing and enforcing H.B. 12:30:42
6 3293, including any delegation of authority to or
7 supervision over the West Virginia Secondary
8 School Activities Commission, West Virginia county
9 boards of education, and/or county
10 superintendents," did I read that correctly? 12:30:59

11 A. Yes.

12 Q. What did you do to prepare for Topic 4?

13 A. Just reviewed House Bill 3293.

14 Q. Did you review any other documents?

15 A. No. 12:31:12

16 Q. And did you consult with anyone other than
17 your attorneys?

18 A. No.

19 Q. Topic 5 is "The relationship between the
20 State Board and the West Virginia Secondary School 12:31:24
21 Activities Commission."

22 Did I read that correctly?

23 A. Yes.

24 Q. Did you review any -- what did you -- I'm
25 sorry. 12:31:34

1 What did you do to prepare for Topic 5?

2 A. Again, just reviewed the State Code that
3 spells out that relationship.

4 Q. And did you review any other documents?

5 A. No. 12:31:44

6 Q. And did you consult with anyone other than
7 your attorneys?

8 A. No.

9 Q. Topic 6, "Your relationship and
10 Communication with the West Virginia Legislature, 12:31:55
11 including individual legislators, legislative
12 staff, Committees, and/or Committee staff, in
13 developing legislation, including Your
14 Communication regarding and involvement in the
15 drafting, passage, and implementation of H.B. 12:32:09
16 3293. This expressly includes all Communications
17 with the House Education Committee, including its
18 counsel Melissa White."

19 Did I read that correctly?

20 A. Yes. 12:32:22

21 Q. What did you do to prepare for Topic 6?

22 A. Just reviewed the exhibits that had been
23 submitted.

24 Q. And did you review any other documents?

25 A. No. 12:32:32

1 Q. And did you consult with anyone other than
2 your attorneys?

3 A. No.

4 Q. Topic 7, "Your Policies, Documents, and
5 Communications Concerning the participation of 12:32:44
6 transgender students in athletics in West Virginia
7 from January 1st, 2019 to the present."

8 Did I read that correctly?

9 A. Yes.

10 Q. What did you do to prepare for Topic 7? 12:32:55

11 A. There is nothing to review. We had no
12 documents for this one.

13 Q. And did you consult with anyone other than
14 your attorneys?

15 A. No. 12:33:06

16 Q. Topic 8, "Your Policies, Documents and
17 Communications Concerning the separation of boys
18 and girls in school-sponsored sports in West
19 Virginia prior to and following the passage of
20 H.B. 3293." 12:33:22

21 Did I read that correctly?

22 A. Yes.

23 Q. What did you do to prepare for Topic 8?

24 A. Nothing.

25 Q. Did you review any documents? 12:33:32

1 A. No.

2 Q. And did you consult with anyone other than
3 your attorneys?

4 A. No.

5 Q. Topic 9, "Your understanding Concerning 12:33:39
6 the purpose, scope, and implications of 3293.
7 This expressly includes Your understanding of
8 what, if any, governmental interests are furthered
9 by H.B. 3293." [As read]

10 Did I read that correctly? 12:33:57

11 A. Yes.

12 Q. What did you do prepare for Topic 9?

13 A. Just read the House Bill 3293 statute.

14 Q. Did you review any other documents?

15 A. No. 12:34:09

16 Q. And did you consult with anyone other than
17 your attorneys?

18 A. No.

19 Q. Topic 10, "Your Policies, Documents, and
20 Communications Concerning B.P.J. and her family 12:34:24
21 from January 1st, 2019, to the present." [As read]

22 Did I read that correctly?

23 A. Yes.

24 Q. What did you do to prepare for Topic 10?

25 A. We had nothing to -- to review or consider 12:34:34

1 in that.

2 Q. So you didn't review any documents?

3 A. No, other than the court case --

4 Q. And did you consult -- and did you consult

5 with anyone other than your attorneys? 12:34:47

6 A. No.

7 Q. Topic 11, "Your Policies, Documents, and

8 Communications Concerning H.B. 3293."

9 (Interruption in audio/video.)

10 THE COURT REPORTER: Excuse me. There was 12:35:01

11 an interruption. There was a cough.

12 If you could please start over.

13 MS. VEROFF: Sure.

14 BY MS. VEROFF:

15 Q. Topic 11, "Your Policies, Documents, and 12:35:06

16 Communications Concerning H.B. 3293. This

17 expressly includes Your Green Book Summary of H.B.

18 3293 published in 2021, Bates stamped W -- WVSBOE

19 000035, as well as the Enrolled Bill Review Form

20 submitted in relation to H.B. 3293 Bates stamped 12:35:27

21 WVSBOE 000038."

22 Did I read that correctly?

23 A. Yes.

24 Q. What did you do to prepare for Topic 11?

25 A. Just reviewed those documents. 12:35:41

1 Q. And did you review any other documents
2 besides the Green Book Summary and the Enrolled
3 Bill Review Form?

4 A. No.

5 Q. And did you consult with anyone other than 12:35:51
6 your attorneys?

7 A. No.

8 Q. Topic 12, the last one, "All Your
9 discovery responses provided to date in this
10 action." 12:36:03

11 Did I read that correctly?

12 A. Yes.

13 Q. What did you do to prepare for Topic 12?

14 A. Just reviewed the discovery responses.

15 Q. Did you review any other documents? 12:36:13

16 A. No.

17 Q. And did you consult with anyone other than
18 your attorneys?

19 A. No.

20 Q. Besides what we've just discussed, did you 12:36:22
21 do any other preparation for today's deposition?

22 A. No.

23 Q. Do you understand that you are testifying
24 today about these topics on behalf of the State
25 Board? 12:36:37

1 A. Yes.

2 Q. So, accordingly, when I ask for your
3 position on something, I'll be asking for the
4 position of the State Board, unless I specify
5 otherwise.

12:36:48

6 Does that make sense?

7 A. Yes.

8 Q. Great.

9 So even though we're largely going to be
10 discussing the -- the State Board, I do want to
11 talk a little bit about your personal background.
12 So for these questions, I'm asking you to speak on
13 your own behalf rather than that of the State
14 Board.

12:36:57

15 What is your current position?

12:37:08

16 A. Deputy State Superintendent.

17 Q. And what are your responsibilities as
18 Deputy State Superintendent?

19 A. Basically to oversee the management of the
20 Department of Education and the various offices.

12:37:22

21 Q. And can you tell me a little bit more
22 about what that involves?

23 A. We have six main divisions here that serve
24 the different areas that are controlled by the
25 Department of Education, and so each of these

12:37:40

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1 offices I'll work with reviewing any policies that
2 they are -- are producing, work with the State
3 Board of Education to get those policies out on
4 comment, and then come back for approval,
5 oversight of the various budgets from -- in the 12:37:55
6 different offices, and the personnel issues or
7 hirings that may come up.

8 Q. And how long have you been in this role?

9 A. I've been in this role about a year and a
10 half. 12:38:11

11 Q. And who do you report to?

12 A. I report to the superintendent, Clayton
13 Burch.

14 Q. And does anyone report to you?

15 A. Yes, the -- the six officers report to me 12:38:24
16 directly.

17 Q. And who are the six officers?

18 A. We have our division of CTE, and that's
19 Clinton Burch; teaching and learning, Sonia White;
20 support and accountability, Charlene Coburn; 12:38:42
21 federal programs, Melanie Parkey; our data
22 management and information systems, Tim Conzett;
23 and then our chief financial officer, Phil Uwey.

24 Q. And did you go to college, Ms. Blatt?

25 A. I did. 12:39:06

1 Q. Where did you go?

2 A. Marshall University in Huntington.

3 Q. And did you obtain a degree there?

4 A. Yes.

5 Q. What degree did you earn? 12:39:15

6 A. I have a bachelor's in K-8 multisubject
7 teaching. And I have a master's in educational
8 leadership. And I have a master's as a reading
9 specialist, K to adult.

10 Q. And after you finished at Marshall 12:39:31
11 University, what was the first job that you had?

12 A. I was a classroom teacher.

13 Q. What school did you teach at?

14 A. First job was Eastland Middle.

15 Q. Got it. 12:39:44

16 And what county is that in?

17 A. Wayne County. The school no longer
18 exists, though.

19 Q. And what --

20 MS. MORGAN: Julie, just -- just so the 12:39:51
21 record's clear, this is beyond the scope of the --
22 the 12 topics that you have filed that you were
23 going to ask her questions about.

24 You know, I want to go ahead and allow it
25 just to, you know, try to move forward on this, but 12:40:05

1 I just want to preserve that objection.

2 MS. VEROFF: Thank you.

3 BY MS. VEROFF:

4 Q. And after that teaching position, what was
5 the next job that you had? 12:40:15

6 A. I was a teacher for six years in Wayne
7 County.

8 Q. And what grade did you teach?

9 A. Sixth, seventh, and eighth.

10 Q. And after you finished those six years of 12:40:28
11 teaching, what did you do next?

12 A. I went into administration. I was an
13 assistant principal for three years.

14 Q. And what school were you the assistant
15 principal at? 12:40:40

16 A. Buffalo Middle School in Wayne County.

17 Q. And after that job, what did you do next?

18 A. I became the principal of Buffalo Middle
19 School for one year and then transferred to
20 Buffalo Elementary School for four years as the 12:40:56
21 principal.

22 Q. And when you finished with that role as
23 the principal of the elementary school, what did
24 you do after that?

25 A. That was at the time that I came to the 12:41:09

1 State Department of Education.

2 Q. And have you held the position of deputy
3 superintendent the entire time you've been at the
4 State Board of Education [verbatim]?

5 A. No. I was hired as the leadership 12:41:18
6 development coordinator, moved into an assistant
7 director role, then a director role, then became
8 an assistant state superintendent over one of our
9 divisions prior to becoming the deputy
10 superintendent. 12:41:34

11 Q. That's great.

12 And are there any jobs that you've held
13 that we haven't talked about just now?

14 A. I don't think so, other than part-time
15 college jobs. 12:41:48

16 Q. Excellent. Thank you.

17 And do you play any sports?

18 A. I did.

19 Q. What sports did you play?

20 MS. MORGAN: Same objection. Object to 12:41:58
21 the form and exceeds the scope of the topics.

22 THE WITNESS: Basketball, track, and cross
23 country.

24 BY MS. VEROFF:

25 Q. And do you coach any sports? 12:42:10

1 A. No.

2 Q. Do you have any kids?

3 A. I do.

4 MS. MORGAN: I'm -- I'm going to con- --
5 give me a continuing objection. I don't understand 12:42:21
6 why this would be relevant to her 30(b)(6)
7 deposition here.

8 MS. VEROFF: Very happy to give you a
9 continuing deposition [sic], and -- and we'll wrap
10 up shortly. 12:42:36

11 BY MS. VEROFF:

12 Q. Do any of your kids play school sports?

13 A. Yes.

14 Q. What sports do they play?

15 A. My son ran cross country and track. My 12:42:43
16 daughter played basketball, volleyball, and ran
17 cross country and track.

18 Q. Great.

19 And before today, did you know who B.P.J.
20 was? 12:43:02

21 A. Just in preparing for this case.

22 Q. But outside of preparing for this case,
23 did you know who she was?

24 A. Just from news articles.

25 Q. And has anyone at the State Board ever had 12:43:15

1 direct communications with B.P.J.?

2 A. No.

3 Q. Has anyone at the State Board ever had
4 direct communications with B.P.J.'s mother?

5 A. No. 12:43:30

6 Q. Has anyone at the State Board ever had
7 direct communications with B.P.J.'s father?

8 A. No.

9 Q. And has anyone at the State Board ever had
10 direct communications with one of B.P.J.'s 12:43:43
11 siblings?

12 A. No.

13 Q. I want to shift to talking a little bit
14 about the state superintendent.

15 Have you ever met Superintendent Burch? 12:43:55

16 A. Yes.

17 Q. I would imagine so, given your role.

18 How long has Superintendent Burch been in
19 his position?

20 A. Approximately two years. 12:44:06

21 Q. And how is someone selected to be the
22 state superintendent?

23 A. The state superintendent is selected by
24 the State Board of Education.

25 Q. And is there a term limit for the 12:44:23

1 superintendent?

2 A. No. They serve at the will and pleasure
3 of the State Board of Education.

4 Q. And who is the superintendent employed by?

5 A. They're employed by the State Board of 12:44:35
6 Education.

7 Q. And is the superintendent considered a
8 State official?

9 A. Yes.

10 Q. What are the superintendent's 12:44:46
11 responsibilities?

12 A. His responsibility is the general
13 oversight of the public education system,
14 including the -- the county school systems, the
15 county superintendents, and the various schools 12:45:02
16 across the state.

17 Q. And what is the relationship between the
18 superintendent and the West Virginia Department of
19 Education?

20 A. The -- the state superintendent hires the 12:45:15
21 staff of the Department of Education and oversees
22 their work.

23 Q. And as far as the relationship between the
24 superintendent and the State Board, is the
25 superintendent a member of the State Board? 12:45:30

1 A. Yes. An ex-officio member.

2 Q. Does ex officio mean the superintendent
3 doesn't have a vote?

4 A. Correct.

5 Q. Does the superintendent have any kind of 12:45:46
6 supervision over the State Board?

7 A. No, the superintendent serves the State
8 Board.

9 Q. So, for example, the superintendent
10 couldn't veto a decision of the State Board? 12:45:56

11 A. Correct.

12 MS. MORGAN: Julie, I'm just going to
13 object on the basis, again, this exceeds the topics
14 set forth in the notice of deposition, the 12
15 topics. 12:46:09

16 MS. VEROFF: Thank you. I -- I believe
17 that these questions are responsive to Topic 1,
18 which include the role and responsibilities of
19 the -- the superintendent. But just to -- to keep
20 going forward. 12:46:22

21 BY MS. VEROFF:

22 Q. Does the superintendent oversee public
23 schools in West Virginia?

24 A. Yes. He has the general oversight.

25 Q. And what does that general oversight 12:46:30

1 involve?

2 A. The superintendent ensures that the -- the
3 public school system is implementing, like, the
4 policies that are set forth by the State Board of
5 Education and over- -- and oversees the general 12:46:47
6 operations of the -- of the school systems.

7 Q. And does that oversight of the school
8 system include Bridgeport Middle School?

9 A. The -- the superintendent would, you know,
10 oversee all the county systems and schools, but 12:47:04
11 works more directly with our county boards of
12 education.

13 Q. And can you tell me a little bit more
14 about how the superintendent works with the county
15 boards of education? 12:47:16

16 A. Basically, through the staff that he
17 hires, the various programs -- or federal programs
18 that we have, our school improvement leadership,
19 the various services that we provide, and the
20 supports to the school systems. 12:47:33

21 Q. And does the superintendent have any
22 relationship with the county superintendents?

23 A. He has a working relationship with all 55
24 of our county superintendents.

25 Q. And what is the nature of that working 12:47:49

1 relationship?

2 A. Just a matter of they -- you know, we put
3 out information here regularly to our
4 superintendents to provide guidance and -- and
5 support. They will reach out to the 12:48:03
6 superintendent or to staff here for technical
7 assistance.

8 Q. And does the superintendent oversee the
9 West Virginia Secondary School Activities
10 Commission? 12:48:20

11 A. No.

12 Q. Is there any relationship between the
13 superintendent and the West Virginia Secondary
14 Schools [verbatim] Activities Commission?

15 A. Not really a relationship. I mean, you 12:48:27
16 know, the paths cross with the State Board, but...

17 Q. Is the superintendent required to follow
18 State law?

19 A. Yes.

20 Q. Is the superintendent required to follow 12:48:44
21 H.B. 3293?

22 A. Once it was codified, then yes.

23 Q. Are you familiar with the West Virginia
24 Education Information System?

25 A. Yes. 12:48:58

1 Q. We've heard it abbreviated as WVEIS.

2 Is that a -- a term you're familiar with?

3 A. Yes.

4 Q. And can you tell me, what is WVEIS?

5 A. WVEIS is a statewide edu -- student 12:49:12
6 information system that we maintain here at the
7 State level and the counties input their data
8 into.

9 Q. And so, does the superintendent have any
10 control over WVEIS? 12:49:26

11 A. The superintendent probably does not even
12 have access to individual records in WVEIS.

13 Q. Does the superintendent have any
14 involvement with deciding what kinds of records
15 are collected in WVEIS? 12:49:40

16 A. Only if something comes forth in a policy
17 would he be aware of any changes or things that
18 are made.

19 Q. Got it.

20 And can you tell me about the relationship 12:49:52
21 between the State Board and the West Virginia
22 Department of Education?

23 A. Well, the State Board hires the
24 superintendent who oversees the staff at the
25 Department of Education. 12:50:08

1 And so, we all have a working relationship
2 as we work to implement and -- revise and
3 implement policies.

4 Q. So would it be correct to think of the
5 State Board as part of the Department of 12:50:21
6 Education, or how -- how would you describe kind
7 of how the two entities are situated together?

A. No, the -- the -- the State Board is a
separate entity that supervises the state
superintendent and so, then ultimately, the Department of Education.

12:50:36

12	Q. I see.
----	-----------

13 And is the Department of Education a
14 government entity?

15	A. Yes.	12:50:47
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16 Q. And is the State Board also a government
17 entity?

18	A. Yes.
----	---------

19	Q. Does the State Board receive any federal	
20	funding?	12:50:57

21 A. The -- the Department of Education
22 receives funding.

23 Q. Do you know what kind of federal funding
24 the Department of Education receives?

25	A. We receive all of the Elementary and	12:51:09
----	---	----------

1 Secondary Education Act Title programs, the IDEA
2 funding for special education, and -- and Perkins
3 funding, which goes with our CTE programs.

4 Q. Do you know how many people are employed
5 at the Department of Education? 12:51:30

6 A. Approximately 234.

7 Q. And so, the State Board has members; is
8 that right?

9 A. Yes.

10 Q. How many members are there on the State 12:51:41
11 Board?

12 A. There are nine members.

13 Q. And how many of those nine members are
14 ex-officio members?

15 A. Two. 12:51:54

16 Q. Two.

17 A. Including nine members --

18 Q. And how are --

19 A. -- plus two ex-officio members.

20 Q. So just to confirm, there are 11 members 12:52:06
21 of the State Board in total?

22 A. Yes.

23 Q. And how are the members selected?

24 A. The members are appointed by the governor.

25 Q. And is that the case for all 11 members? 12:52:17

1 A. No, just the -- the nine State Board
2 members.

3 Q. And besides the superintendent, who is the
4 other ex-officio member?

5 A. Chancellor Sarah Tucker that's over our 12:52:32
6 Higher Education Policy Commission and our career
7 and technical council.

8 Q. And how often do the members of the State
9 Board meet?

10 A. They meet monthly. 12:52:45

11 Q. And how does the State Board make
12 decisions?

13 A. The State Board makes decisions based on
14 policies that have been -- that are presented to
15 them, that have been placed on comment and -- and 12:52:59
16 reviewed.

17 Q. And, for example do they use a -- a
18 majority-vote system to make a decision?

19 A. Yes.

20 Q. They do. 12:53:12

21 And does anyone have veto authority over a
22 decision made by the State Board?

23 A. No.

24 Q. And is the State Board's decision subject
25 to approval of any other body? 12:53:23

1 A. No.

2 Q. And what would you say are the
3 responsibilities of the State Board?

4 A. I'm sorry. Could you repeat.

5 Q. Of course. 12:53:37

6 What are the responsibilities of the State
7 Board?

8 A. The -- the State Board is charged with the
9 general oversight of our system of free schools in
10 the state of West Virginia. 12:53:50

11 Q. And what does the board try to accomplish
12 when it has its monthly meetings?

13 A. Mon- -- monthly, they will either be
14 reviewing a policy that may have been on comment
15 or they may be hearing about a policy on that is 12:54:02
16 going out on comment or has come back in order to
17 be approved.

18 They start each of their meetings with the
19 focus on the strategic plan that they have in
20 place, and usually a presentation from department 12:54:17
21 staff on a certain topic. And that, along with --
22 as well as having delegations from the community.

23 Q. And so, to talk a little bit more about
24 the educational policies piece, what does it mean
25 in practice for the State Board to try to 12:54:33

1 determine educational policies?

2 A. I mean, basically, the State Board
3 oversees the various pieces of -- of the
4 department. Many of our policies are tied to
5 either federal requirements or state legislation, 12:54:51
6 and that's how many of our policies come into play
7 so that the board will review and consider.

8 Q. And does the State Board have any
9 involvement in establishing rules?

10 A. Yes. The State Board will establish the 12:55:09
11 rules for West Virginia Board of Education rules.

12 Q. And does the State Board have any other
13 responsibilities besides the ones that you just
14 talked about --

15 (Interruption in audio/video.) 12:55:26

16 THE COURT REPORTER: Excuse me. I didn't
17 hear the rest of the -- part of the question. If
18 you can please repeat.

19 MS. VEROFF: Of course.

20 BY MS. VEROFF: 12:55:32

21 Q. I was asking, does the State Board have
22 any other responsibilities beside the ones we just
23 talked about?

24 A. No. Just to enact and implement policy
25 and oversight of the -- our supervision of 12:55:42

1 the State -- in the --

2 (Interruption in audio/video.)

3 THE COURT REPORTER: "Our supervision of
4 the"?

5 Could you please repeat. There was an 12:55:54
6 audio interruption.

7 THE WITNESS: They enact and implement
8 policy and have oversight of the -- or supervision
9 rights of the -- over the state superintendent
10 [verbatim]. 12:56:06

11 BY MS. VEROFF:

12 Q. And does the State Board have to comply
13 with federal law?

14 A. Yes.

15 Q. Does the State Board have to comply with 12:56:11
16 Title IX?

17 A. Yes.

18 Q. And does the Department of Education have
19 to comply with Title IX?

20 A. Yes. 12:56:23

21 Q. Does the State Board have to comply with
22 state law?

23 A. Yes.

24 Q. Does the State Board have to comply with

25 H.B. 3293? 12:56:32

1 MS. MORGAN: Julie, this -- I'm going to
2 object to form. It -- this also calls for a legal
3 conclusion as well as these other questions.

4 But you can go ahead and answer.

5 THE WITNESS: Yes, once it was codified 12:56:45
6 and became state law.

7 BY MS. VEROFF:

8 Q. Does the State Board discuss state laws
9 regarding education at its meetings?

10 A. As they relate to policies, they do. 12:56:56

11 Q. Has the State Board ever discussed H.B.
12 3293 at one of its meetings?

13 A. No.

14 Q. And is that unusual for the State Board
15 not to discuss a law concerning education that's 12:57:15
16 now been codified?

17 A. No.

18 Q. Do you know whether the State Board has a
19 missions statement?

20 A. They do. 12:57:28

21 Q. And do you know what it is?

22 A. I should.

23 Something to the effect of becoming
24 lifelong learners with education and community
25 and the -- and the workforce. 12:57:45

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1 Q. I'm going to go ahead and introduce
2 another exhibit. I'll let you know when it's
3 available in your marked folder [verbatim].

4 (Blatt Deposition Exhibit 16 was marked
5 electronically.) 12:58:15

6 BY MS. VEROFF:

7 Q. Okay. If you refresh your Marked Exhibits
8 folder, you should be able to see Exhibit 16.
9 Just let me know when you can see it.

10 A. Yes. I can see it. 12:58:24

11 Q. Great.

12 And do you recognize this document?

13 A. Yes, that's our website.

14 Q. Great.

15 Well, I'll represent that Exhibit 16 is a 12:58:35
16 web page from the West Virginia Department of
17 Education's website titled "State Board of
18 Education." You see the URL in the bottom left
19 corner. And if you scroll to the second page
20 under "Mission," it says, "The West Virginia Board 12:58:49
21 of Education and State Superintendent --

22 THE COURT REPORTER: Excuse me. Counsel,
23 if you could if you're reading, please. Thank you.

24 MS. VEROFF: Yes, of course.

25 BY MS. VEROFF: 12:59:02

1 Q. "The West Virginia Board of Education and
2 State Superintendent of Schools work in concert to
3 establish policies and procedures to assure
4 implementation of West Virginia's Public Education
5 goals and to ensure the general supervision, 12:59:13
6 oversight and monitoring of a thorough, efficient
7 and effective system of free public schools."

8 Did I read that correctly?

9 A. Yes.

10 Q. Is that an accurate statement of the State 12:59:25
11 Board's mission?

12 A. Yes.

13 Q. I'd like to talk a little bit more about
14 how the State Board generally supervises public
15 schools in West Virginia. 12:59:40

16 Can you tell me a little about what that
17 general supervision involves?

18 A. Well, the State Board of Education has
19 a -- of course, as we -- we've said before,
20 directly supervises the superintendent. The 12:59:52
21 superintendent then has an office of
22 accountability. And that -- that group is charged
23 with ensuring that our county school systems are
24 implementing the policies or procedures, adhering
25 to the financial audits, the various federal 13:00:07

1 requirements. And so they receive a report
2 annually on the county school systems.

3 Q. And are there any other ways in which the
4 State Board monitors public schools in West
5 Virginia? 13:00:23

6 A. No.

7 Q. And are there any other forms of oversight
8 that the State Board engages in with regards to
9 public schools in West Virginia?

10 A. No. 13:00:35

11 Q. We talked a little bit previously about
12 the West Virginia Secondary School Activities
13 Commission.

14 Are you familiar with the West Virginia
15 Secondary School Activities Commission? 13:00:53

16 A. Yes.

17 Q. Can you tell me what it is?

18 A. It is the -- a -- association charged with
19 oversight of all of the secondary schools'
20 athletic events. 13:01:05

21 Q. And does the Department of Education have
22 any relationship with the West Virginia Secondary
23 School Activities Commission?

24 A. Our only involvement with them is when
25 they submit a rule to be approved or submitted to 13:01:17

1 the State Board.

2 Q. And when the Secondary School Activities
3 Commission submits a rule, can you talk me through
4 what that approval process involves?

5 A. They will present to the State Board of 13:01:33
6 Education. The State Board then has the authority
7 to accept the rule and put it out on a public
8 30-day comment. And then after the comment
9 period, then they can either approve or reject the
10 rule. 13:01:50

11 Q. And what criteria does the State Board use
12 in deciding whether to approve or reject a rule?

13 A. I think the State Board relies on the
14 staff of the Department of Education to provide
15 them with -- with guidance as to the legality of 13:02:03
16 the rule, if it's based on federal, if it based on
17 state statute, and then will also review the
18 comments from the -- that come in on the policy.

19 Q. Has the State Board ever not approved a
20 rule submitted by the commission? 13:02:23

21 A. Not to my knowledge, but I've not been
22 here forever.

23 Q. And can the West Virginia Secondary School
24 Activities Commission issue a rule that conflicts
25 with a rule issued by the State Board? 13:02:39

1 A. I'm aware that they do have their -- their
2 rules and regulations guidance document that they
3 use, but I don't think there's anything in
4 conflict with the State Board of Education.

5 Q. And does the commission have to comply 13:02:54
6 with the rules issued by the State Board?

7 A. Yes.

8 Q. So I'm going to introduce a new exhibit
9 now. I'll let you know when it's available in the
10 marked folder [verbatim]. 13:03:10

11 (Blatt Deposition Exhibit 17 was marked
12 electronically.)

13 BY MS. VEROFF:

14 Q. So if you refresh your Marked Exhibits
15 folder, you should now be able to see Exhibit 17. 13:03:42
16 Just let me know when you can see that.

17 A. Yes, we can see that.

18 Q. So I'll represent that this is a discovery
19 response produced by your counsel to plaintiff's
20 counsel. 13:03:55

21 Do you recognize this document?

22 A. Yes.

23 Q. So please scroll to page 5 of the PDF, and
24 just let me know when you're there.

25 A. Okay. We are there. 13:04:08

1 Q. Great.

2 So I want to direct your attention to
3 "REQUEST NO. 5," which is towards the bottom of
4 the page.

5 And it reads, "REQUEST NO. 5: All 13:04:19
6 DOCUMENTS and POLICIES CONCERNING YOUR delegation
7 of authority over secondary school athletics to
8 the West Virginia Secondary School Activities
9 Commission."

10 The response states, "These Defendants do 13:04:30
11 not have any non-privileged documents which are
12 responsive to this request other than those which
13 are publicly available, including W.Va. Code
14 Section 18-2-25 which was approved by WVBE, and
15 WVSSAC rules including but not limited to 127CSR2 13:04:48
16 which states, "'4.1. The WVSSAC shall be
17 composed' --

18 THE COURT REPORTER: Please slow down.
19 BY MS. VEROFF:

20 Q. -- 'of principals or designee' -- 13:04:57

21 MS. VEROFF: I'm sorry.

22 BY MS. VEROFF:

23 Q. -- 'of those public or private secondary
24 schools which have certified in writing to the
25 State Superintendent of Schools of West Virginia 13:05:07

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1 (State Superintendent) that they have elected to
2 delegate the control, supervision, and regulation
3 of their interscholastic athletic and band
4 activities.'" "

5 That was a lot. 13:05:20

6 Did I read that correctly?

7 A. Yes.

8 Q. Excellent.

9 Are you familiar with 127CSR2?

10 A. Yes. 13:05:29

11 Q. And is what I read a correct statement of
12 127CSR2?

13 MS. MORGAN: Objection as to form.

14 THE WITNESS: I do believe so, as that was
15 one of the documents, part of the re- -- when I 13:05:43
16 reviewed this, that the counsels provided.

17 BY MS. VEROFF:

18 Q. And so, to confirm I understand the
19 meaning, is it correct that principals are
20 required to submit a written certification to the 13:05:54
21 superintendent for their school to be able to be a
22 member of the West Virginia Secondary School
23 Activities Commission?

24 MS. MORGAN: Object to form.

25 THE WITNESS: Yes, according to 4.1. 13:06:07

1 BY MS. VEROFF:

2 Q. And why does that requirement exist?

3 A. I do not have that --

4 MS. MORGAN: Object -- object to the form
5 of the question. Calls for speculation, legal 13:06:16
6 conclusion.

7 BY MS. VEROFF:

8 Q. If a secondary school doesn't submit a
9 certification to the state superintendent, are
10 they not allowed to be part of the West Virginia 13:06:31
11 Secondary School Activities Commission?

12 MS. MORGAN: Objection.

13 THE WITNESS: According to 4.1 that's
14 listed there, yes.

15 BY MS. VEROFF: 13:06:40

16 Q. And do you know whether the principal of
17 Bridgeport Middle School has submitted this
18 certification to the state superintendent?

19 A. I do not.

20 Q. Does the State Board have any involvement 13:06:51
21 with the West Virginia Education Information
22 System, WVEIS?

23 A. Just in the -- the fact that it's in one
24 of the policies and they're aware of that and at
25 times are given reports. 13:07:08

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1 Q. And does the State Board have any control
2 over the kind of data that's collected in WVEIS?

3 MS. MORGAN: Asked and answered.

4 THE WITNESS: Yes, as they would say, we
5 have a -- there is a policy that oversees the type 13:07:25
6 of data that is collected.

7 BY MS. VEROFF:

8 Q. And so just to make sure I understand, for
9 example, the State Board could enact a policy that
10 required a particular piece of data to be 13:07:36
11 collected, and then that data collection process
12 would be implemented in WVEIS?

13 A. After it went through a 60-day comment
14 period, because we also have State Code that
15 references our WVEIS system and the data that is 13:07:51
16 allowed to be collected.

17 Q. Great.

18 MS. VEROFF: So before I move on, I know
19 that we said regarding breaks at the beginning that
20 we would go at -- up to about an hour and a half, 13:08:03
21 but I just wanted to -- to check in and see how
22 everyone was doing and see if anyone needed a break
23 sooner.

24 THE WITNESS: We are fine.

25 THE COURT REPORTER: I would love one. 13:08:16

1 MS. VEROFF: Okay. Well, let's -- I'm
2 sorry, Hanna, was that you?

3 THE COURT REPORTER: Yes, please. I would
4 appreciate one, please, just a short break.

5 MS. VEROFF: Okay. Great. So why don't 13:08:28
6 we go ahead -- does a -- a five-minute break work
7 for folks?

8 MS. MORGAN: Yes, that's fine.

9 MS. VEROFF: Okay. That would be great.

10 And, Mitch, could you send us into the 13:08:37
11 break-out rooms during the -- break?

12 THE VIDEOGRAPHER: Yeah. Your rooms are
13 still open, so you can join any time. Okay --

14 MS. VEROFF: Okay. Great.

15 So why don't we plan to come back at --

16 THE COURT REPORTER: Would you like to go
17 off the record?

18 THE VIDEOGRAPHER: Should we go off the
19 record?

20 MS. VEROFF: -- 1:15? 13:08:56

21 THE VIDEOGRAPHER: Anyways, we're going
22 off the record. The time is 1:08 p.m., and this is
23 the end of Media Unit Number 1.

24 (Short recess taken.)

25 THE VIDEOGRAPHER: Okay. We are back on 13:18:51

1 the record at 1:18 p.m., and this is beginning of
2 Media Unit Number 2.

3 Go ahead.

4 MS. VEROFF: Thank you.

5 BY MS. VEROFF: 13:19:01

6 Q. So I'd like to jump back into talking
7 about the State Board's rule-making and
8 policy-making authority and process.

9 First, can you tell me what the difference
10 is between a State Board rule and a State Board 13:19:13
11 policy?

12 A. There's no difference between the State
13 Board policy and the State Board rule when we --
14 we actually call them policies through the Board
15 of Education; but then when they are filed with 13:19:25
16 our Secretary of State, then they're assigned a --
17 a rule number.

18 Q. I see.

19 So just to make sure I understand, so
20 everything starts out as a policy, but it becomes 13:19:37
21 a rule when it gets filed?

22 A. It's just referenced that way.
23 They're the -- they're the same, one and the same.

24 Q. I see.

25 And so are there -- so there -- there are 13:19:49

1 no policies of the State Board that didn't go
2 through the rule-making process?

3 A. Correct.

4 Q. Got it.

5 And do you know how many rules and 13:20:02
6 policies the State Board has issued?

7 A. I believe we're at 82, 83.

8 Q. And is the State Board ever required by
9 state law to promulgate a rule?

10 A. Yes. 13:20:21

11 Q. And is the State Board allowed to
12 promulgate a rule that conflicts with a state law?

13 A. No.

14 MS. MORGAN: Ob- -- object to form.

15 BY MS. VEROFF: 13:20:36

16 Q. So I'd like to know a little bit more
17 about the rule-making process. What happens first
18 when the State Board is considering a rule?

19 A. Well, depending on the -- kind of the
20 nexus for beginning a rule, if it's based on 13:21:37
21 something that's been told to be promulgated from
22 legislation, then it requires a look at that
23 language to begin with.

24 We usually have an internal team here that
25 will draft some language. Any policy making 13:21:02

1 always requires external stakeholders that will be
2 part of the committee as well to review. And then
3 we will work to get a final draft of the policy
4 that then will be presented to the State Board of
5 Education for review. 13:21:21

6 And then if -- if they are pleased with
7 that, it will go out on a 30-day comment period to
8 the entire state and then may or may not have
9 changes based on comment and then be approved the
10 following month. 13:21:36

11 Q. And who ultimately approves the rule?

12 A. The State Board of Education.

13 Q. And are there any internal policies that
14 govern the rule-drafting process?

15 A. Not really any internal process -- or 13:21:51
16 policies, but just some procedures that -- to --
17 to make it aligned and consistent formatting and
18 things like that. They're mostly technical.

19 Q. Are those procedures written down
20 anywhere? 13:22:08

21 A. On the -- our policy website. On the
22 State Board of Education -- or the State
23 Department of Education website under policies
24 there will be some forms that are used to --
25 checklists and things to verify the process. 13:22:19

1 Q. And so from start to finish, how long does
2 the whole rule-making process typically take?

3 A. It really depends on the content and the
4 length of the policy. I mean, we have some
5 policies that are two or three pages, and we have 13:22:37
6 some that are a hundred and 50 pages, so it really
7 just depends.

8 Q. Do you ever issue interim rules without
9 going through the public comment period?

10 A. At times there may be like an emergency 13:22:53
11 rule that will be enacted and it -- while -- while
12 it's on comment.

13 Q. And what would be the reason to have an
14 emergency rule?

15 A. It's normally something that is required 13:23:08
16 by the State Legislature.

17 Q. And are there any examples of emergency
18 rules that you can think of?

19 A. I can't think of any.

20 Q. Is there a specific person at the State 13:23:22
21 Board who has responsibilities for drafting a
22 rule?

23 A. No. The drafting would come from whoever
24 the content experts were in the -- the area of the
25 policy. 13:23:38

1 Q. And does the State Board ever monitor
2 compliance with its rules?

3 MS. MORGAN: Object to form.

4 THE WITNESS: They would monitor through
5 the process that I described earlier with our 13:23:51
6 accountability office.

7 BY MS. VEROFF:

8 Q. And does the State Board ever enforce
9 compliance with its rules?

10 MS. MORGAN: Are you talking a specific 13:24:03
11 rule?

12 BY MS. VEROFF:

13 Q. Let -- let me rephrase.

14 As a -- as a general matter, does the
15 State Board have any enforcement mechanisms that 13:24:11
16 it puts into its rules?

17 MS. MORGAN: Object to form.

18 THE WITNESS: Our accountability office
19 has a policy that dictates the -- the oversight and
20 the way that various policies and things have to be 13:24:22
21 enforced.

22 BY MS. VEROFF:

23 Q. And so -- so how -- kind of using that --
24 that background, how does the State Board decide
25 what the enforcement means should be for a given 13:24:35

1 rule?

2 MS. MORGAN: Object to form.

3 THE WITNESS: I don't think there's
4 specific things to a given rule. We just -- we
5 have a policy in place that -- with the oversight 13:24:45
6 and our accountability policy to -- with -- just to
7 generalize how we do all of them.

8 BY MS. VEROFF:

9 Q. And is there a particular person or
10 particular office of the State Board that's 13:24:59
11 responsible for enforcing compliance when a rule
12 requires -- well, sorry, when a rule contemplates
13 enforcement?

14 A. Again, our accountability and support
15 office oversees all of that work. 13:25:11

16 Q. Has the County Board of Education ever
17 violated a State Board rule?

18 MS. MORGAN: Object to form.

19 THE WITNESS: I'm sure there's been at
20 some time. 13:25:29

21 BY MS. VEROFF:

22 Q. And what happens if a rule is violated?

23 A. Basically -- I mean, it depends on -- you
24 know, we have -- we have rules or policies that --
25 oversight of financial things, as well as our 13:25:41

1 curriculum and instruction policies. And so it
2 would really -- it really varies depending on
3 what -- which policy might have been, you know,
4 not followed.

5 Q. And is there any kind of appeals process 13:25:58
6 if there's thought to be a violation?

7 A. Are you referencing for the county?

8 Q. Yes.

9 A. Yeah. Yeah, as part of the -- our
10 accountability policies and that office, part of 13:26:17
11 the work that they do is to provide -- you know,
12 provide information and reviews and then meet with
13 the counties and allow them to explain or correct
14 findings. We'll do noncompliances and findings,
15 and then they have the opportunity to correct 13:26:34
16 those and respond.

17 Q. Okay. And has the West Virginia Secondary
18 School Activities Commission ever violated a State
19 Board rule?

20 A. Not to my knowledge, but... 13:26:45

21 Q. Has an individual school ever violated a
22 State Board rule?

23 A. I mean, I'm sure when you look at the
24 breadth and the depth of our rules, that there's
25 something in there that has occurred. 13:27:02

1 Q. Has a student ever violated a State Board
2 rule?

3 A. Yes.

4 Q. And has a -- a coach for a school sports
5 team ever violated a State Board rule? 13:27:12

6 A. I mean, again, just when you look at the
7 80-some policies, I'm sure there is something in
8 one of those that at some point has occurred.

9 Q. And is the oversight practice that you
10 described for the county the same process that 13:27:26
11 would apply to any entity, or are the processes
12 different?

13 A. I'm not sure which other entity you would
14 be referring to.

15 Q. Oh, I'm sorry. For example, a school or 13:27:38
16 an individual student.

17 A. You know, our oversight is mainly at
18 the -- at the county level. And then the counties
19 have oversight of their schools and are to enforce
20 the -- the rules and policies with their schools 13:27:53
21 and then the school of course with the student.

22 Q. I see. So --

23 (Interruption in audio/video.)

24 THE COURT REPORTER: I'm sorry. "With the
25 student"? Excuse me, there was a little cough, and 13:28:08

1 I didn't hear the end.

2 "And then the school of course with the
3 student"?

4 THE WITNESS: Yes.

5 BY MS. VEROFF: 13:28:10

6 Q. So if, for example, a -- a student
7 violated a State Board rule, can you walk me
8 through what the process then would be?

9 A. If a student violated a rule, then it
10 would be addressed at the -- at the school level. 13:28:23

11 Q. You mentioned earlier that there are
12 content experts for different state laws; is that
13 correct?

14 A. Yes.

15 Q. Is there a content expert for H.B. 3293? 13:28:39

16 A. No. We have -- no.

17 Q. And why hasn't there been a content expert
18 chosen for H.B. 3293?

19 MS. MORGAN: Object to form.

20 THE WITNESS: Well, when I reference 13:29:01

21 "content expert" in reference to who writes the
22 policies, mainly I'm referring to like our
23 curriculum instruction policy. So we have a
24 math -- someone with a math background that will
25 work on that. 13:29:13

1 And then we have other -- we have
2 leadership, people that have been in administration
3 that have been principals and assistant principals,
4 so they may oversee some of the ones that are of
5 the broader spectrum. 13:29:26

6 BY MS. VEROFF:

7 Q. Does the State Board ever promulgate a
8 rule in conjunction with another entity?

9 A. Not to my knowledge.

10 Q. So, for example, has the State Board ever 13:29:37
11 promulgated a rule in conjunction with a West
12 Virginia Secondary School Activities Commission?

13 A. Not in conjunction with. They -- they
14 submit their rules from their organization, and
15 then they're reviewed by the State Board. 13:29:52

16 Q. Got it.

17 So I want to ask now a couple questions
18 about the State Board and school sports. And when
19 I refer to "state sports," [verbatim] what I mean
20 is athletics offered by public secondary schools 13:30:07
21 in West Virginia; so, for example, the
22 cross-country team at Bridgeport Middle School.

23 Does the Department of Education have any
24 role with respect to school sports in West
25 Virginia? 13:30:22

1 A. The Department of Education or the -- the
2 Board of Education?

3 Q. I'll ask about them separately. So,
4 first, the Department of Education.

5 A. Okay. The -- no. 13:30:29

6 Q. And does the State Board have any role
7 with respect to school sports in West Virginia?

8 A. Just in the approval of the rules that the
9 secondary school's association -- the SSAC
10 presents to them. 13:30:45

11 Q. Does the State Board currently have any
12 roles pertaining to school sports?

13 A. Only one. It's in relation to the 2.0 GPA
14 for eligibility.

15 Q. So can you tell me a little bit more about 13:30:58
16 what that rule involves?

17 A. Just that students are required to
18 maintain a 2.0 in order to participate in a sport.

19 Q. And are there any other rules that the
20 State Board has regarding school sports? 13:31:12

21 A. No.

22 Q. Does the State Board monitor participation
23 in school sports?

24 A. No.

25 Q. Does the State Board have any rules 13:31:24

1 regarding students who are transgender?

2 A. No.

3 Q. Has the State Board ever received any
4 complaints regarding students who are transgender
5 participating in school sports?

13:31:41

6 A. No.

7 Q. Has the superintendent ever received any
8 complaints regarding students who are transgender
9 participating in school sports?

10 A. No.

13:31:56

11 Q. So I want to shift back to talking more
12 specifically about H.B. 3293. Are you familiar
13 with H.B. 3293?

14 A. Yes.

15 Q. Does H.B. 3293 require the State Board to
16 promulgate rules to implement H.B. 3293?

13:32:09

17 A. Yes.

18 Q. And has the State Board chosen an employee
19 to be the person responsible for promulgating the
20 rules to implement H.B. 3293?

13:32:26

21 A. No.

22 Q. I'd like to introduce a new exhibit now.
23 I'll let you know when it's available in your
24 "Marked Exhibits" folder.

25 (Blatt Deposition Exhibit 18 was marked

13:32:43

1 electronically.)

2 MS. VEROFF: I just introduced Exhibit 18.

3 BY MS. VEROFF:

4 Q. If you refresh your "Marked Exhibits"
5 folder, you should be able to see it. Please just 13:33:17
6 let me know when you have it up.

7 A. It's up.

8 Q. Do you recognize this document?

9 A. Yes.

10 Q. Great. 13:33:21

11 I'll represent that this is a discovery
12 response produced by your counsel to Plaintiff's
13 counsel and ask you to turn to page 6.

14 Just let me know when you're there.

15 A. Okay. We are there. 13:33:42

16 Q. If you look in the middle of the page,
17 you'll see Interrogatory Number 6, which says,
18 "Identify all PERSONS responsible for promulgating
19 rules to implement H.B. 3293."

20 And the answer states, "Heather Hutchens, 13:33:58
21 General Counsel for WVBE is responsible for
22 promulgating rules to implement H.B. 3293."

23 Did I read that correctly?

24 A. Yes.

25 Q. And can you tell me, what does WVBE stand 13:34:13

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1 for?

2 A. The West Virginia Board of Education.

3 Q. And is it accurate that Heather Hutchens
4 is responsible for promulgating rules to implement
5 H.B. 3293? 13:34:30

6 A. Heather Hutchens is -- does promulgate --
7 or works with all of the rules and policies that
8 are presented to the board. So accord- -- because
9 she --

10 Q. Got it. 13:34:40

11 A. -- you know, she would -- she would lead
12 that along with some other people within the
13 department, too, to craft a policy.

14 Q. And so just to confirm I understand, so
15 Heather Hutchens works on all rules that are 13:34:49
16 issued by the State Board?

17 A. Yes.

18 Q. And has anyone else who will be working on
19 implementing H.B. 3293 rules been chosen?

20 A. Not to my knowledge. The statute actually 13:35:02
21 came into effect after a lawsuit was filed. So,
22 therefore, we chose to wait and see the outcome
23 as -- as opposed to spending the time developing a
24 rule that may or may not be changed based on court
25 action. 13:35:22

1 Q. And so have there been any discussions at
2 the State Board about what rules implementing H.B.
3 3293 will be?

4 MS. MORGAN: Object to form and also to
5 the extent that this requests communications with 13:35:38
6 counsel.

7 THE WITNESS: Could you repeat the
8 question?

9 BY MS. VEROFF:

10 Q. Sure. 13:35:49

11 And so I'm not asking you to disclose any
12 privileged communications you've had with your
13 attorneys.

14 Have there been any discussions at the
15 State Board about what the rules implementing H.B. 13:35:59
16 3293 will be?

17 A. No, other than just the simple what we
18 read in State Code.

19 Q. I'm sorry, I couldn't understand the last
20 sentence. Would you mind repeating it? 13:36:12

21 A. I said just looking at what is required in
22 State Code.

23 Q. So there have been discussions at the
24 State Board about what H.B. 3293 requires? Did I
25 understand correctly? 13:36:26

1 A. No, not -- not with the State Board.

2 Q. And -- and so who has had those
3 discussions?

4 A. And I may have misspoke when you said
5 "discussions." But just stating that we would 13:36:36
6 look at the language and the policy would
7 replicate what is in State Code.

8 Q. I see.

9 So there have been any discussions at the
10 State Board regarding H.B. 3293? 13:36:45

11 A. No.

12 Q. And have there been any actions taken at
13 the State Board to prepare to promulgate rules
14 implementing H.B. 3293?

15 A. No. Again, we had not got to that prior 13:37:01
16 to the lawsuit.

17 Q. Okay. And so just to confirm, is it your
18 testimony that the State Board hasn't taken any
19 action to promulgate rules implementing H.B. 3293
20 because this lawsuit was filed? 13:37:17

21 A. Well, it's just the time frames and
22 because of the lawsuit, there -- we had not
23 had time --

24 Q. And --

25 (Simultaneous speaking.) 13:37:26

1 (Interruption in audio/video.)

2 A. There was not the -- there was not time
3 prior to the lawsuit to start working on the rules
4 when the session ended and the rule became
5 effective. 13:37:34

6 Q. So if this lawsuit had not been filed,
7 would the State Board have begun preparing to
8 implement rules to implement H.B. 3293?

9 MS. MORGAN: Objection as to form. It
10 also calls for speculation. 13:37:46

11 You can answer the best that you can.

12 THE WITNESS: Most likely, yes, we -- we
13 would have.

14 BY MS. VEROFF:

15 Q. And would any rules the State Board issues 13:37:55
16 pursuant to H.B. 3293 have to be consistent with
17 H.B. 3293?

18 A. Yes.

19 Q. And so put another way, just to make sure
20 I understand, could the State Board issue rules in 13:38:10
21 conflict with H.B. 3293?

22 A. No.

23 Q. Under any rules that the State Board
24 issues to implement H.B. 3293, will cisgender
25 girls be able to participate girls sports team? 13:38:29

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1 A. Yes, according to my understanding of
2 the -- the statute.

3 Q. And under any rules that the State Board
4 issues to implement H.B. 3293, will transgender
5 girls be able to participate on girls sports 13:38:47
6 teams?

7 A. Not from my understanding of the statute.

8 MS. MORGAN: And let me just place my
9 objection as to form. I didn't want to interrupt
10 her answer, but object to form. 13:38:58

11 BY MS. VEROFF:

12 Q. Must the West Virginia Secondary School
13 Activities Commission comply with any rule that
14 the State Board issues to implement H.B. 3293?

15 MS. GREEN: Object to the form. 13:39:10

16 MS. MORGAN: Same objection.

17 THE COURT REPORTER: Excuse me. One
18 second.

19 Who objected to form? I did not get the
20 speaker, please. 13:39:20

21 MS. GREEN: This is Roberta Green here on
22 behalf of WVSSAC, and I object to the form.

23 MS. MORGAN: And Kelly Morgan, I also
24 objected to form as well.

25 BY MS. VEROFF: 13:39:42

1 Q. You can answer the question. Please let
2 me know if you need me to repeat it.

3 A. Yes, please. Yes, please repeat I mean.

4 Q. Does the West Virginia Secondary School
5 Activities Commission have to comply with any rule 13:39:54
6 that the State Board promulgates to implement H.B.
7 3293?

8 A. Yes.

9 Q. And does the Harrison County Board of
10 Education have to comply with any rule that the 13:40:05
11 State Board issues to implement H.B. 3293?

12 A. Yes.

13 MS. DENIKER: This is Susan Deniker.
14 Objection to the form.

15 BY MS. VEROFF: 13:40:18

16 Q. You can go ahead and answer.

17 A. Yes.

18 Q. And does the Harrison County
19 Superintendent have to comply with any rule that
20 the State Board promulgates to implement H.B. 13:40:31
21 3293?

22 MS. DENIKER: This is Susan Deniker.
23 Objection to the form.

24 THE WITNESS: Yes.

25 BY MS. VEROFF: 13:40:41

1 Q. And does Bridgeport Middle School have to
2 comply with any rule that the State Board
3 promulgates to implement H.B. 3293?

4 MS. DENIKER: This is Susan Deniker. Same
5 objection. 13:40:57

6 THE WITNESS: Yes.

7 BY MS. VEROFF:

8 Q. I'm going to introduce a new exhibit now.
9 I'll let you know when it's available in your
10 "Marked Exhibits" folder. 13:41:05

11 (Blatt Deposition Exhibit 19 was marked
12 electronically.)

13 BY MS. VEROFF:

14 Q. I've now introduced Exhibit 19. If you
15 refresh your "Marked Exhibits" folder, you should 13:41:26
16 be able to view it. Please just let me know when
17 you have it up.

18 A. Yes, it's up.

19 Q. And do you recognize this document?

20 A. Yes. 13:41:40

21 Q. I'll represent that these are documents
22 produced to plaintiff's counsel by your counsel as
23 part of your discovery production.

24 And I'm going to ask you to scroll to page
25 3 of this document. In the bottom left corner, 13:41:51

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1 you should see that it's Bates stamped WVSBOE
2 '00008.

3 Do you see that?

4 A. Yes.

5 Q. And at the bottom of the -- the -- sorry. 13:42:05

6 At the bottom of page 3, you'll see an
7 e-mail from Melissa White sent on Thursday,
8 March 11, 2021, to Bernie Dolan with the subject
9 line "Transgender participation in secondary
10 schools bill." 13:42:22

11 Do you see that?

12 A. Yes.

13 Q. And do you recognize this e-mail?

14 A. Yes, from my review of the documents.

15 Q. Who is Melissa White? 13:42:31

16 A. Melissa White is the counsel for house
17 education.

18 Q. And who is Bernie Dolan?

19 A. Bernie Dolan is the executive director of
20 the SSAC. 13:42:50

21 Q. So The e-mail reads, "Bernie, Attached is
22 a draft of an originating bill regarding
23 transgender participation in sports. I kept it
24 short. There are obviously certain things that
25 would need to be handled in a rule, unless you 13:42:59

1 have language that you would like to see in the
2 bill. Please let me know your thoughts and if
3 there are unintended consequences. The Chairman
4 does not want to keep girls from participating in
5 boys sports when there are not girls teams. 13:43:13
6 Thanks, Melissa."

7 Did I read that correctly?

8 A. Yes.

9 Q. Do you know if Bernie Dolan responded to
10 this e-mail? 13:43:35

11 (Simultaneous speaking.)

12 (Interruption in audio/video.)

13 MS. MORGAN: I'll just object to form.

14 MS. GREEN: Same objection.

15 THE COURT REPORTER: Excuse me. Could
16 please repeat the --

17 BY MS. VEROFF:

18 A. Did Bernie Dolan --

19 THE COURT REPORTER: Excuse me. Could you
20 please repeat your objections.

21 MS. MORGAN: Object to form.

22 MS. GREEN: This is Roberta Green on
23 behalf of SS- -- deputy SSAC. I object to form.

24 BY MS. VEROFF:

25 Q. Did Bernie Dolan otherwise discuss H.B. 13:43:49

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1 3293 with Melissa White?

2 MS. GREEN: Object to the -- this is
3 Roberta Green on behalf of SSAC. I object to the
4 form.

5 MS. MORGAN: Object to form as well. 13:44:04

6 MS. VEROFF: And moving forward, we can
7 assume that an objection for one is an objection
8 for all.

9 MS. MORGAN: Well, I have --

10 MS. GREEN: Well, I appreciate that, 13:44:10
11 actually. But I represent a different defendant,
12 and I would like to enter my objections myself.
13 Thank you.

14 MS. MORGAN: Yeah, I be- -- I agree with
15 Roberta. I do not believe that is appropriate 13:44:19
16 protocol. Objections should be placed by each
17 defendant.

18 BY MS. VEROFF:

19 Q. You can go ahead and answer. Please let
20 me know if you need me to repeat the question. 13:44:35

21 A. Yes, please repeat.

22 Q. Did Bernie Dolan otherwise discuss H.B.
23 3293 with MW?

24 MS. MORGAN: Object to form and also calls
25 for speculation. 13:44:45

1 MS. GREEN: I'll object to the form --

2 MS. VEROFF: I'm just re- --

3 MS. GREEN: -- foundation. Scope and --
4 way outside the scope for this witness.

5 But, you know, not my witness. 13:44:54

6 MS. VEROFF: Thank you. This is the same
7 question that I asked previously that you already
8 objected to, and I was just repeating it for the
9 witness's convenience.

10 THE WITNESS: I have no idea. 13:45:08

11 BY MS. VEROFF:

12 Q. And do you know -- and I'm asking you on
13 behalf of the State Board -- know what things
14 Melissa White thought needed to be handled in a
15 rule? 13:45:19

16 MS. MORGAN: Object to form. Also calls
17 for speculation. Outside of the scope of these
18 topics.

19 THE WITNESS: I do not --

20 MS. GREEN: And this is Roberta Green on 13:45:24
21 behalf of SSAC. I object to the form.

22 THE WITNESS: I do not.

23 BY MS. VEROFF:

24 Q. Does the State Board agree that certain
25 aspects of H.B. 3293 need to be handled in a rule? 13:45:35

1 MS. MORGAN: Object to form.

2 THE WITNESS: I mean, the -- the State
3 Board has not had that discussion, as they have not
4 started to promulgate a rule.

5 BY MS. VEROFF: 13:45:54

6 Q. And just to confirm, aside from
7 rule-making, has the State Board taken any other
8 action to contemplate the implementation of H.B.
9 3293?

10 MS. MORGAN: Object to form. 13:46:10

11 THE WITNESS: No, not to my knowledge.

12 BY MS. VEROFF:

13 Q. I'd like now to ask you about some of the
14 people who are listed on the State Board's initial
15 disclosures. 13:46:21

16 Let's start with Sarah Stewart.

17 Do you know who Sarah Stewart?

18 A. Sarah Stewart was our previous legislative
19 liaison attorney that worked with -- at the
20 Department of Education. 13:46:34

21 Q. And do you say "previous" because she no
22 longer works at the Department of Education?

23 A. Correct.

24 Q. And when did she leave that role?

25 MS. MORGAN: Object to form. 13:46:43

1 Julie, this is beyond the -- the 12 topics
2 set forth in this -- on this notice.

3 THE WITNESS: I don't remember the exact
4 date. It's been within the last year.

5 BY MS. VEROFF: 13:46:58

6 Q. And did Sarah Stewart have any involvement
7 with H.B. 3293 when it was pending before the
8 legislature?

9 MS. MORGAN: Same objection.

10 THE WITNESS: Other than just her -- her 13:47:08
11 role as the legislative liaison working with the --
12 with the different committees.

13 BY MS. VEROFF:

14 Q. And did Sarah Stewart have any involvement
15 with H.B. 3293 after it was passed? 13:47:21

16 MS. MORGAN: Object to form. Beyond the
17 scope. Calls for speculation.

18 She's a 30(b)(6) witness. You're not --
19 she -- she's not going to know personal factual
20 information held by Sarah Stewart. 13:47:36

21 THE WITNESS: I don't know.

22 BY MS. VEROFF:

23 Q. I'm going to ask now about Heather
24 Hutchens, who's listed in the initial disclosures.

25 Do you know who Heather Hutchens is? 13:47:50

1 A. I do.

2 Q. And what is her position?

3 A. She's general counsel for the Department
4 of Education --

5 Q. And what -- 13:47:57

6 (Simultaneous speaking.)

7 (Interruption in audio/video.)

8 A. Sorry.

9 Q. I'm sorry to interrupt. No, no, that was
10 my fault. 13:48:02

11 What does the general counsel role entail?

12 MS. MORGAN: Object to form.

13 THE WITNESS: General counsel oversees all
14 the policies, regulations, the management of the --
15 the personnel for the State Board and for the 13:48:17
16 Department of Education.

17 BY MS. VEROFF:

18 Q. And did Heather Hutchens have any
19 involvement with H.B. 3293 when it was pending
20 before the legislature? 13:48:31

21 MS. MORGAN: Object to form.

22 THE WITNESS: Only what I've seen in
23 the -- the documents that were submitted.

24 BY MS. VEROFF:

25 Q. And has Heather Hutchens have any 13:48:40

1 involvement with H.B. 3293 since it was passed?

2 MS. MORGAN: Same objection.

3 THE WITNESS: Not to my knowledge.

4 BY MS. VEROFF:

5 Q. I'd like to next ask about Mary Catherine 13:48:51
6 Tuckwiller.

7 Do you know who Mary Catherine Tuckwiller
8 is?

9 A. I do.

10 Q. And what is her position? 13:49:01

11 MS. MORGAN: I'm going to go ahead and
12 place a standing objection.

13 Again, these are beyond the scope of these
14 12 topics. So object to form, and I will just
15 continue my objections here. 13:49:11

16 Go ahead.

17 THE WITNESS: Mary Catherine Tuckwiller
18 was a staff attorney that formerly worked at the
19 Department of Education.

20 BY MS. VEROFF: 13:49:24

21 Q. And what did her job as a staff attorney
22 entail?

23 A. She worked directly for the general
24 counsel.

25 Q. And did she have any involvement with H.B. 13:49:30

1 3293 when it was pending before the legislature?

2 A. I don't know other than what I've seen
3 in -- in the documents that were submitted.

4 Q. And I'd like next ask about Stephanie
5 Abraham. 13:49:43

6 Do you know who Stephanie Abraham is?

7 A. I do.

8 Q. And what is her job?

9 A. She's also a staff attorney that works
10 under our general counsel. 13:50:01

11 Q. And what does that job entail?

12 A. Just -- she's assigned topics and -- and
13 cases and things from the general counsel.

14 Q. And did she have any involvement with H.B.
15 3293 when it was pending before the legislature? 13:50:17

16 A. Not to my knowledge.

17 Q. And I'd like to also ask about Jonah
18 Adkins.

19 Do you know who Jonah Adkins is?

20 A. I do. 13:50:29

21 Q. And what is his position?

22 A. His current position is a coordinator in
23 our accountability office.

24 Q. And did he have any involvement with H.B.
25 3293 when it was pending before the legislature? 13:50:41

1 A. Not that I'm aware of.

2 Q. Great. Thank you.

3 MS. VEROFF: And just to respond to the
4 objections, I just want to alert and point --
5 direct counsel to Topic 12, which is all discovery 13:50:53
6 responses in this action, which the witness has
7 said that she reviewed and those, of course,
8 include the initial disclosures listing all the
9 people that I just asked about.

10 MS. MORGAN: Yes, Julie. Yes, but 13:51:04
11 discovery are not all-encompassing as all pleadings
12 filed in a case. You're talking about initial
13 disclosures.

14 Discovery responses, and as you've gone
15 through, have already been responses to 13:51:18
16 interrogatories request for production of
17 documents, request for admissions. Again, my
18 objection stands.

19 MS. VEROFF: Thank you.

20 I think it's probably a good time to take 13:51:28
21 a quick break. So maybe we can go off the record.

22 MS. MORGAN: We haven't quite been an hour
23 yet. Can we not continue through?

24 MS. VEROFF: I've heard a request from
25 co-counsel to take a -- a quick break. So if we 13:51:42

1 would just take five minutes as a courtesy to
2 co-counsel, I think that would be great.

3 THE VIDEOGRAPHER: Okay. We're going off
4 the record. The time is 1:51 p.m., and this is the
5 end of Media Unit Number 2. 13:51:53

6 (Short recess taken.)

7 THE VIDEOGRAPHER: We are back on the
8 record at 2:03 p.m., and this is the beginning of
9 Media Unit Number 3.

10 Go ahead. 14:04:10

11 MS. VEROFF: Thank you so much.

12 I just want to preserve a -- a few things
13 for the record. Just to note that plaintiff's
14 counsel had offered earlier in the deposition that
15 an objection for one could be an objection for all 14:04:20
16 to expedite things, and the defendants' counsel
17 prefers not to proceed that way.

18 There also have been certain objections
19 about questions beyond the scope. And I wanted to
20 note for the record that the questions regarding 14:04:34
21 Superintendent Burch are encompassed within Topic
22 1. And questions regarding the contents of initial
23 disclosures are encompassed in Topic 12. And
24 questions regarding communications and discussions
25 concerning H.B. 3293 are encompassed in various 14:04:49

1 topics in the deposition notice.

2 BY MS. VEROFF:

3 Q. So picking back up where we left off,

4 Ms. Blatt -- -

5 MS. MORGAN: Oh, I would like to respond 14:04:57
6 here, Julie, before you proceed. I'm not going to
7 actually respond to each of your summarizations, as
8 they are not appropriate.

9 All my objections are -- were accurately
10 stated on the record and will stand. And those can 14:05:09
11 be addressed with the Court at a future date.

12 MR. TRYON: This is David Tryon. I must
13 comment.

14 Julie, you indicated that there was a
15 stipulation that an objection by one is an 14:05:24
16 objection for all. I do not recall hearing that.
17 I will not -- I'm not sure if that's an accurate
18 statement of the law or not. But I do not remember
19 hearing that. The record will show whatever it
20 was. Thank you. 14:05:37

21 MS. GREEN: This is Roberta Green on
22 behalf of SSAC, and I also would like to make my
23 own objections. I may have said that already on
24 the record. But also my objections made up to this
25 point and those going forward will stand as well. 14:05:54

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1 Thank you.

2 MS. VEROFF: Thank you so much.

3 BY MS. VEROFF:

4 Q. So, let's dive back in, Ms. Blatt.

5 Prior to H.B. 3293's passage, did anyone 14:06:04
6 at the State Board have any communications about
7 H.B. 3293 with legislators?

8 A. On what I've seen in the documents that
9 were submitted with our legislative liaison.

10 Q. And do you know about any communications 14:06:22
11 beyond what's captured in the discovery production
12 that you've seen?

13 A. No.

14 Q. And prior to H.B. 3293's passage, did
15 anyone at the State Board have any communications 14:06:35
16 about H.B. 3293 with legislative staff?

17 A. The communication with Melissa White would
18 be one of their staff.

19 Q. And was there any communications with
20 legislative staff over than Melissa White? 14:06:53

21 A. Not that I'm aware of.

22 Q. And prior to H.B. 3293's passage, did
23 anyone at the State Board have any communications
24 about H.B. 3293 with Governor Justice?

25 A. Not that I'm aware of. 14:07:12

1 Q. And prior to H.B. 3293's passage, did
2 anyone at the State Board have communication about
3 H.B. 3293 with any staff for Governor Justice?

4 A. Not that I'm aware of.

5 Q. Prior to H.B. 3293's passage, did anyone 14:07:26
6 at the State Board have any communications about
7 H.B. 3293 with Alliance Defending Freedom?

8 A. Not to my knowledge.

9 Q. And prior to H.B. 3293's passage, did
10 anyone at the State Board have any communications 14:07:44
11 about H.B. 3293 with any county board of
12 education?

13 A. No, not to my knowledge.

14 Q. And prior to H.B. 3293's passage, did
15 anyone at the State Board have any communications 14:07:58
16 about H.B. 3293 with any individual schools?

17 A. Not to my knowledge.

18 Q. Prior to H.B. 3293's passage, did anyone
19 at the State Board have any communications about
20 H.B. 3293 with any school principals? 14:08:14

21 A. Not to my knowledge.

22 Q. And prior to H.B. 3293's passage, did the
23 State Board have any communications about H.B.
24 3293 with anyone other than the groups of folks
25 we've just talked about? 14:08:31

1 A. No, not that I'm aware of.

2 Q. And prior to H.B. 3293's passage, did
3 Superintendent Burch have any communications about
4 H.B. 3293 with any of the individuals I've just
5 asked you about? 14:08:46

6 A. Not that I'm aware of.

7 Q. Was anyone at the State Board ever told by
8 a legislator what the purpose of H.B. 3293 was?

9 A. Not that I'm aware of.

10 Q. Was anyone at the State Board ever told by 14:09:00
11 a legislative staffer what the purpose of the H.B.
12 3293 was?

13 A. Not that I'm aware of.

14 Q. I'd like to ask you a few questions about
15 the State Board's interactions with the House of 14:09:14
16 Delegates Education Committee while H.B. 3293 was
17 pending.

18 Did anyone from the State Board answer
19 questions posed by the House of Delegates
20 Education Committee during meetings? 14:09:31

21 A. The State Board of Education does not
22 interact with the House Education Committee. If
23 anyone would have interacted with them, it would
24 have been our legislative liaison, Sarah Stewart.

25 Q. And so, did anyone -- so besides Sarah 14:09:40

1 Stewart, did anyone else at the Department of
2 Education answer questions posed by the House of
3 Delegates Education Committee?

4 A. I don't believe so.

5 Q. And at which House of Delegates Education 14:09:56
6 Committee meeting did Sarah Stewart answer
7 questions?

8 A. Are you referencing, like, a date or...

9 Q. Yes. Can you tell me the dates on which
10 Sarah Stewart answered questions -- 14:10:07

11 A. No. I'm sorry. I can't.

12 (Interruption in audio/video.)

13 THE COURT REPORTER: Excuse me. If you
14 could start the question over. There was an
15 interruption. 14:10:20

16 BY MS. VEROFF:

17 Q. Sure. I'll -- and I'll rephrase.

18 On which dates did Sarah Stewart answer
19 questions from the House of Delegates Education
20 Committee? 14:10:28

21 A. I don't know the dates.

22 Q. Did you speak with Sarah Stewart in
23 preparation for today's deposition?

24 A. I did not.

25 Q. And do you know who posed questions to 14:10:37

1 Sarah Stewart at the House of Delegates Education
2 Committee meetings?

3 A. No, I don't.

4 Q. Do you know what questions were asked of
5 Sarah Stewart? 14:10:52

6 A. No.

7 Q. Do you know whether Sarah Stewart provided
8 her answers orally or in writing?

9 A. I do not.

10 Q. Do you know what answers Sarah Stewart 14:11:01
11 provided to the House of Delegates Education
12 Committee?

13 A. I do not.

14 Q. Did you review Sarah Stewart's testimony
15 before the House of Delegates Education Committee 14:11:16
16 for today's deposition?

17 A. No, I have not.

18 Q. Is it typical for staff at the Department
19 of Education to answer questions from the
20 legislature related to bills under consideration? 14:11:26

21 A. Yes. Usually technical ques- -- questions
22 are addressed.

23 Q. And is Sarah Stewart usually the person
24 who provides that testimony?

25 A. Yes, she was at the time. 14:11:40

1 Q. And who is the person now who would
2 provide such testimony?

3 A. Drew McClanahan.

4 Q. And what is their position?

5 A. He's our legislative director now. 14:11:56

6 Q. All right.

7 So I'd like to direct you back to one of
8 our marked exhibits. So this is Exhibit 19. It
9 should already be in your Marked Exhibits folder.

10 If you can just let me know when you have 14:12:11
11 it up.

12 A. Okay. We have it up.

13 Q. Great.

14 And I'd like to ask you to scroll to
15 page 3 of the PDF, please. You'll see in the 14:12:23
16 bottom left corner it's Bates-stamped WVSBOE
17 000008.

18 Do you see that page?

19 A. Yes.

20 Q. And in the middle of the page, there's an 14:12:38
21 e-mail from Melissa White sent on Monday,
22 March 15th, 2021, to Sarah Stewart. The subject
23 is "FW: Transgender participation in secondary
24 schools bill."

25 Do you see that e-mail? 14:12:55

1 A. I do.

2 Q. And I'll represent that this is a document
3 produced to plaintiff's counsel by your counsel as
4 part of discovery production.

5 Do you recognize this e-mail? 14:13:04

6 A. Yes.

7 Q. Is it one that you reviewed in preparation
8 for today's deposition?

9 A. Yes.

10 Q. And the body of the e-mail says, "Sarah, 14:13:13
11 per our discussion. Thank you, Melissa."

12 Did I read that correctly?

13 A. Yes.

14 Q. Do you know what "per our discussion"
15 refers to? 14:13:27

16 A. I do not.

17 Q. And did you speak to Sarah Stewart about
18 this e-mail in preparation for today's deposition?

19 MS. MORGAN: Asked and answered.

20 THE WITNESS: I did not. 14:13:39

21 BY MS. VEROFF:

22 Q. Did you speak to Melissa White in
23 preparation for today's deposition?

24 A. No.

25 Q. Do you know if Sarah Stewart responded to 14:13:48

1 Melissa White's e-mail?

2 A. I don't know.

3 Q. I'd like you now to turn to page 2 of
4 Exhibit 19. You'll see in the bottom left-hand
5 corner that it's Bates-stamped WVSBOE 000007.

14:14:00

6 Do you see that e- -- that page?

7 A. Yes.

8 Q. And so, at the bottom of this page is an
9 e-mail from Sarah Stewart sent on Monday,
10 March 15th, 2021, to Heather Hutchens, Stephanie
11 Abraham and Mary Catherine Tuckwiller with a
12 subject line, "FW: Transgender participation in
13 secondary schools bill."

14:14:15

14 Do you see that e-mail?

15 A. I do.

14:14:29

16 Q. And I'll represent that your counsel
17 provided this document to plaintiff's counsel as
18 part of discovery production.

19 The e-mail reads, "Happy Monday. Would
20 you all care to take a look at this one and
21 provide feedback (preferably in writing)? Not
22 necessarily on the substance, but modifications we
23 would suggest. I have to leave for a funeral soon
24 and not sure when will be back this afternoon.

14:14:40

25 Thanks, Sarah."

14:14:55

1 Did I read that correctly?

2 A. Yes.

3 Q. And do you recognize this e-mail?

4 A. Yes.

5 Q. Did you review it in preparation for 14:15:01
6 today's deposition?

7 A. (No response by witness.)

8 Q. And by "take a look at this one" --

9 THE COURT REPORTER: Excuse me. I don't
10 know if there was an audio glitch, but I did not 14:15:18
11 get an answer.

12 THE WITNESS: It was yes.

13 BY MS. VEROFF:

14 Q. By "take a look at this one," was Sarah
15 Stewart referring to the draft of H.B. 3293? 14:15:34

16 MS. MORGAN: Object to form. Calls for
17 speculation.

18 THE WITNESS: It would appear that
19 that's -- by looking at the subject line.

20 BY MS. VEROFF: 14:15:46

21 Q. And do you know why Sarah Stewart asked
22 these three individuals for their feedback on H.B.
23 3293?

24 MS. MORGAN: Objection as to form. And
25 calls for speculation. 14:15:58

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1 THE WITNESS: They all are in our legal
2 office. They're all three attorneys.

3 BY MS. VEROFF:

4 Q. And do you know why Sarah Stewart
5 preferred to receive their feedback in writing? 14:16:11

6 MS. MORGAN: Same objections.

7 THE WITNESS: I do not.

8 BY MS. VEROFF:

9 Q. Do you know who Sarah Stewart plans to
10 share any suggested modifications with? 14:16:23

11 MS. MORGAN: Same objections.

12 THE WITNESS: I do not.

13 BY MS. VEROFF:

14 Q. Did any of the recipients of this e-mail
15 respond? 14:16:35

16 A. Yes, I believe there was a response from
17 one of them in -- in the exhibits. I think it may
18 have been Mary Catherine Tuckwiller.

19 Q. And do you know if any of them suggested
20 modifications to H.B. 3293? 14:16:55

21 A. I do not.

22 Q. And did you speak with Heather Hutchens
23 about this e-mail in preparing for today's
24 deposition?

25 MS. MORGAN: Ob- -- object to form. And 14:17:07

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1 you're also asking about communications between
2 Michele as -- with counsel. That's protected by
3 the attorney-client privilege.

4 You can answer whether you actually spoke
5 to her, just not to -- as to any substance. 14:17:27

6 THE WITNESS: Not --

7 (Interruption in audio/video.)

8 THE COURT REPORTER: Can you please
9 repeat.

10 THE WITNESS: I said, "Not in relation to 14:17:32
11 the e-mail."

12 BY MS. VEROFF:

13 Q. And did you speak with Stephanie Abraham
14 about this e-mail in preparation for today's
15 deposition? 14:17:42

16 MS. MORGAN: Same objection and same
17 direction.

18 THE WITNESS: No.

19 BY MS. VEROFF:

20 Q. And did you ask -- did you speak with Mary 14:17:48
21 Catherine Tuckwiller about this e-mail in
22 preparation for today's deposition?

23 MS. MORGAN: Same objection. Same
24 direction.

25	THE WITNESS: No.	14:17:59
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1 BY MS. VEROFF:

2 Q. And do you know where we would find the
3 information about whether any of these individuals
4 suggested modifications to H.B. 3293?

5 A. I do not. 14:18:10

6 Q. I'd like you now to look at page 1 of this
7 exhibit, which at the bottom is Bates stamped
8 WVSBOE 000006.

9 Just let me know when you're on that page.

10 A. We're there. 14:18:30

11 Q. Great.

12 So at the top you'll see an e-mail from
13 Heather Hutchens sent on Monday, March 15th, 2021,
14 to Mary Catherine Tuckwiller, Sarah Stewart, and
15 Stephanie Abraham. The Subject line is "RE: 14:18:42
16 Transgender participation in secondary schools
17 bill."

18 Do you recognize this e-mail?

19 A. Yes.

20 Q. Did you review it in preparation for 14:18:48
21 today's deposition?

22 A. Yes.

23 Q. The body of the e-mail reads, "It seems
24 like much ado about nothing. I don't think any of
25 it is necessary." 14:19:01

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1 Did I read that correctly?

2 A. Yes.

3 Q. And when Heather Hutchens said "It seems
4 like much ado about nothing," was she referring to
5 H.B. 3293? 14:19:14

6 MS. MORGAN: Object to form. You're --
7 again, this is a 30(b)(6) deposition.

8 You can [verbatim] --

9 (Interruption in audio/video.)

10 -- actually ask individuals about their 14:19:20
11 personal knowledge, but I will let you answer to
12 the extent that you're able to do so.

13 THE WITNESS: Only looking at the subject
14 line, would I suspect that's what it is.

15 BY MS. VEROFF: 14:19:33

16 Q. And did you discuss this e-mail with
17 Heather Hutchens in preparing for today's
18 deposition?

19 MS. MORGAN: Object to form to the extent
20 that it is asking about her discussions with 14:19:41
21 counsel protected by the attorney-client privilege.

22 But you can testify as to whether you
23 actually spoke to her, just not as to substance.

24 THE WITNESS: Yes.

25 BY MS. VEROFF: 14:19:57

1 Q. Thank you.

2 And -- and just to confirm, as I said at

3 the outset, I'm not asking for any confidential

4 communications that you've had with your counsel.

5 I'm just asking about the nature of your

14:20:03

6 preparation for today's deposition.

7 So just looking for whether or not you

8 spoke with someone.

9 And so when Heather Hutchens writes here

10 that H.B. 3293 is, quote, "much ado about

14:20:12

11 nothing," what was her reason for concluding that

12 H.B. 3293 was "much ado about nothing"?

13 MS. MORGAN: Object to form and

14 speculation.

15 THE WITNESS: The only thing I would say

14:20:27

16 is that we've not had an issue in West Virginia

17 regarding transgender in sports.

18 BY MS. VEROFF:

19 Q. Does the State Board agree that H.B. 3293

20 is much ado about nothing?

14:20:38

21 MS. MORGAN: Object to form.

22 THE WITNESS: I could not answer to that

23 for the State Board.

24 BY MS. VEROFF:

25 Q. And are you here speaking today on behalf

14:20:46

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1 of the State Board?

2 MS. MORGAN: Asked and answered.

3 Obviously she has been designated to testify as to
4 the 12 topics identified in the notice.

5 THE WITNESS: Yes. 14:20:57

6 BY MS. VEROFF:

7 Q. But you don't know the State's position on
8 whether the -- I'm sorry, the State Board's
9 position on whether it would agree that H.B. 3293
10 is "much ado about nothing"? 14:21:09

11 MS. MORGAN: Object to form.

12 THE WITNESS: I just know that we don't
13 see an issue in West Virginia.

14 BY MS. VEROFF:

15 Q. Okay. 14:21:18

16 So I'm going to introduce a new exhibit
17 now. I'll let you know when you can expect to see
18 it in the "Marked Exhibits" folder.

19 (Blatt Deposition Exhibit 20 was marked
20 electronically.) 14:21:40

21 BY MS. VEROFF:

22 Q. If you'll refresh your "Marked Exhibits"
23 folder, you should now see what's marked as
24 Exhibit 20. Please just let me know when you have
25 it up. 14:21:51

1 A. I'm sorry, it's up.

2 Q. Oh, okay. Excellent.

3 A. I'm sorry, I zoned out there.

4 Q. No problem.

5 So I'd like to direct you to the first 14:22:13
6 page, which is Bates stamped in the bottom left
7 corner WVSBOE 000002.

8 And on this e-mail -- or, I'm sorry, on
9 this page is an e-mail from Melissa White dated
10 Wednesday, March 17th, 2021, to Sarah Stewart. 14:22:29
11 The Subject line is "HB 3293 (single-sex sports)."

12 Do you recognize this e-mail?

13 A. Yes.

14 Q. Did you review it in preparation for
15 today's deposition? 14:22:42

16 A. Yes.

17 Q. And I'll represent that this document was
18 provided by your counsel to Plaintiff's counsel as
19 part of discovery production. The body of the
20 e-mail reads, "Sarah, As we discussed, how does 14:22:52
21 this look? Thanks, Melissa."

22 Did I read that correctly?

23 A. Yes.

24 Q. And do you know what "as we discussed"
25 refers to? 14:23:04

1 MS. MORGAN: Object to form.

2 THE WITNESS: I do not.

3 BY MS. VEROFF:

4 Q. Did Sarah Stewart and Melissa White have
5 any discussions about H.B. 3293? 14:23:13

6 MS. MORGAN: Object to form.

7 THE WITNESS: I -- I only know what I read
8 there in the e-mail.

9 BY MS. VEROFF:

10 Q. And did Sarah Stewart respond to Melissa 14:23:22
11 White's e-mail?

12 A. I'm not aware.

13 Q. And do you know how we would find out the
14 answer to that question?

15 MS. MORGAN: Object to form. 14:23:34

16 THE WITNESS: I do not.

17 BY MS. VEROFF:

18 Q. Is it common for legislative staff to
19 solicit feedback from State Board employees?

20 A. Yes, particularly through our legislative 14:23:45
21 liaison.

22 Q. And when the Department of Education sends
23 feedback on proposed legislation, does the
24 legislature typically take it into account?

25 A. Most of the feedback we would provide 14:24:02

1 would be technical in nature. We're referencing a
2 policy or something like that. And that type of
3 technical information, they will usually consider.

4 MS. MORGAN: Let me also place my
5 objection as to form on the record. 14:24:14

6 BY MS. VEROFF:

7 Q. And do you know if the legislatures --
8 legislature took into account the Department of
9 Education's feedback on H.B. 3293?

10 MS. MORGAN: Object as to form. 14:24:25

11 THE WITNESS: I do not.

12 MS. VEROFF: I'm going to introduce
13 another exhibit now. I'll let you know when it's
14 available in the marked exhibits folder.

15 (Blatt Deposition Exhibit 21 was marked 14:24:38
16 electronically.)

17 BY MS. VEROFF:

18 Q. I've now placed what is marked as Exhibit
19 21 in the "Marked Exhibits" folder. Please just
20 let me know when you're able to pull it up. 14:25:01

21 MS. MORGAN: What number did you say
22 again?

23 MS. VEROFF: It should be Exhibit 21.

24 THE WITNESS: Yes, I see it.

25 BY MS. VEROFF: 14:25:19

1 Q. Great.

2 And this is Bates stamped in the bottom

3 left corner. The first page is WVSBOE 000013.

4 And the document goes through WVSBOE 000036.

5 And I'll represent that your counsel 14:25:35
6 provided this document to Plaintiff's counsel as
7 part of discovery production.

8 Do you recognize this document?

9 A. Yes.

10 Q. And can you tell me what it was? 14:25:47

11 A. It's our summary of legislation that was
12 passed in that 2021 session.

13 Q. And -- so this is the -- the "2021 Green
14 Book." And is this prepared every legislative
15 session? 14:25:59

16 A. Yes.

17 Q. And who prepares the summaries in the
18 Green Book?

19 A. They're either prepared by our legislative
20 liaison, or it may be prepared by -- if we had 14:26:09
21 a -- a lead that was representing that bill.

22 Q. And does anyone have to approve the
23 summaries that are prepared?

24 A. We approve them through our legal office.

25 Q. And who receives the 2021 Green Book? 14:26:22

1 A. We prepare it for the Department's
2 reference and then for our county superintendents.

3 Q. And how do the county superintendents
4 access the 2021 Green Book?

5 A. It's available electronically on our 14:26:37
6 website.

7 Q. And for each bill listed in the Green
8 Book, is there a WVDE context?

9 A. Yes, I believe so.

10 Q. And does "WVDE" stand for West Virginia 14:26:55
11 Department of Education?

12 A. Yes.

13 Q. And what does it mean to be the Department
14 of Education contact for a bill?

15 A. It just means that if someone has 14:27:07
16 questions regarding that bill, this is who they
17 should reach out to.

18 Q. And how are people chosen to be the
19 Department of Education contact for a given bill?

20 A. Just based on their background and their 14:27:18
21 experience and maybe their work with that bill as
22 it was being led through the legislation.

23 Q. And if someone is listed as the Department
24 of Education contact, does that mean that they
25 speak on behalf of the Department of Education 14:27:34

1 when they answer questions about the bill?

2 A. Yes.

3 Q. I'd like you to turn to page 23 of

4 Exhibit 21. It's page 23 of the PDF.

5 Just let me know when you're there. 14:27:49

6 A. Okay. We're there.

7 Q. Great.

8 So you'll see two bills listed on this

9 page, the second of which is "House Bill 3293:

10 Relating to single-sex participation in 14:28:16

11 interscholastic athletic events."

12 Do you see that?

13 A. Yes.

14 Q. And who is listed as the WVDE contact for

15 House Bill 3293? 14:28:28

16 A. It says "Bernie Dolan, West Virginia

17 Secondary Schools Activities Commission."

18 Q. And why was Bernie Dolan chosen as the

19 Department of Education contact for House Bill

20 3293? 14:28:40

21 MS. GREEN: Roberta Green on behalf of

22 SSAC.

23 Object to the form.

24 THE WITNESS: He was chosen because

25 this -- he is in charge of the SSAC and the 14:28:49

1 regulation and oversight of those athletic events.

2 BY MS. VEROFF:

3 Q. And as the Department of Education contact
4 for House Bill 3293, he was speaking on behalf of
5 the Department of Education if someone contacted 14:29:04
6 him with questions?

7 MS. MORGAN: Object to form.

8 MS. GREEN: I'm going to object to the
9 form.

10 Roberta Green, SSAC. 14:29:14

11 THE WITNESS: He would be speaking in
12 reference to what was in the statute, if contacted.

13 BY MS. VEROFF:

14 Q. And is it unusual for a non-Department of
15 Education employee to be listed as the contact for 14:29:28
16 a bill?

17 MS. MORGAN: Object to form.

18 THE WITNESS: I would say it is not a
19 normal practice; however, the -- our lead on that
20 bill had been Sarah Stewart. By the time this book 14:29:43
21 was published, she had already left, so he was the
22 one that would be able to be most versed in the
23 statute.

24 BY MS. VEROFF:

25 Q. I see. 14:29:53

1 So if Sarah Stewart had still been at the
2 Department of Education, she would have been
3 listed as the contact?

4 MS. MORGAN: Object to form.

5 THE WITNESS: Most likely. 14:30:00

6 BY MS. VEROFF:

7 Q. And the last sentence of the bill summary
8 reads, "The WVBE is charged with adopting a policy
9 to implement the provisions of the bill."

10 Did I read that correctly? 14:30:14

11 A. Yes.

12 Q. And do you agree that the State Board is
13 charged with adopting a policy to implement the
14 provisions of H.B. 3293?

15 A. Yes, according to what I read in statute. 14:30:24

16 Q. Great.

17 MS. VEROFF: Let me introduce another
18 exhibit now. I'll let you know when you can expect
19 it in your "Marked Exhibits" folder.

20 (Blatt Deposition Exhibit 22 was marked 14:30:52
21 electronically.)

22 BY MS. VEROFF:

23 Q. You should now be able to see Exhibit 22
24 in your "Marked Exhibits" folder if you refresh.

25 Please just let me know when you're able to see 14:31:02

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1 it.

2 A. Okay, I can see it.

3 Q. Great.

4 And this is Bates stamped in the bottom

5 left corner WVSBOE 000037, and then the second 14:31:09

6 page is 000038.

7 I'll represent that your counsel provided

8 this document to Plaintiff's counsel as part of

9 discovery production.

10 Do you recon- -- recognize this document? 14:31:25

11 A. Yes.

12 Q. And what is it?

13 A. It's our -- the abstract that we complete

14 as legislation is sent to the governor's office.

15 Q. And did you review this document in 14:31:39

16 preparation for today's deposition?

17 A. Yes.

18 Q. Is the Enrolled Bill Review Form a

19 standard form that's prepared for all bills that

20 pass? 14:31:52

21 A. Yes.

22 Q. And how did this form develop?

23 MS. MORGAN: Object to form.

24 THE WITNESS: I don't know. We've used

25 the form as long as I'm aware of that I've been 14:32:04

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1 here.

2 BY MS. VEROFF:

3 Q. Is there a law requiring use of this form?

4 MS. MORGAN: Object to form.

5 THE WITNESS: I'm not -- I'm not aware of 14:32:14
6 one.

7 BY MS. VEROFF:

8 Q. And who prepared this Enrolled Bill Review
9 Form for H.B. 3293?

10 A. Sarah Stewart, our legislative liaison, 14:32:21
11 our government affairs counsel.

12 Q. And who receives the Enrolled Bill Review
13 Form?

14 A. They're sent to the governor's office.

15 Q. And who in the governor's office receives 14:32:35
16 it?

17 A. I'm not sure if there's an exact person.
18 I mean, there's a chief of staff that has several
19 attorneys on staff.

20 Q. And is it sent to anyone else? 14:32:51

21 A. No, not to my knowledge.

22 Q. And do you know what the governor's office
23 does with the form when it receives it?

24 MS. MORGAN: Object to form.

25 THE WITNESS: My understanding is just 14:33:02

1 that they -- they review the agency's summary of
2 the bill in determination, recommendations that
3 they would make to the governor.

4 BY MS. VEROFF:

5 Q. And besides Sarah Stewart, who prepared 14:33:11
6 the Enrolled Bill Review Form, did anyone else at
7 the Department of Education review this Enrolled
8 Bill Form [verbatim] for H.B. 3293?

9 A. I can't speak exactly to this bill. But
10 the normal process is the state superintendent 14:33:32
11 would review prior to submitting.

12 Q. And do you know if the state
13 superintendent reviewed this Enrolled Bill Form
14 [verbatim] for H.B. 3293?

15 MS. MORGAN: Object to form. 14:33:41

16 THE WITNESS: I can't -- I believe so, but
17 I can't speak for definite.

18 BY MS. VEROFF:

19 Q. And on the second page of the PDF, which
20 is Bates stamped WVSBOE 000038, there's Item 14:33:50
21 Number 14, which says, "Is a Governor's veto
22 recommended? If yes, please explain."

23 And the answer provided is "The WVDE does
24 not support this bill."

25 Did I read that correctly? 14:34:08

1 A. Yes.

2 Q. And does WVDE stand for West Virginia
3 Department of Education here?

4 A. Yes.

5 Q. And is it correct that the Department of 14:34:17
6 Education did not support H.B. 3293?

7 A. Department of Education did -- as we've
8 talked --

9 (Interruption in audio/video.)

10 THE COURT REPORTER: Excuse me. Could you 14:34:31
11 please start over your answer. There was an
12 interruption in audio.

13 THE WITNESS: The -- the Department of
14 Education did not see that we had an issue with
15 transgender in sports that would require us to take 14:34:43
16 the necessary steps and work to promulgate a rule.

17 And then also, normally a rule in relation
18 to sports would have been created by the SSAC and
19 then brought forth to the Board of Education.

20 BY MS. VEROFF: 14:35:04

21 Q. And were there any other reasons besides
22 those two that the Department of Education didn't
23 support H.B. 3293?

24 A. Not that I'm aware of.

25 Q. And who made the decision that the 14:35:13

1 Department of Education didn't support H.B. 3293?

2 A. Well, as I -- as I said a little bit
3 earlier, I will -- you know, it's a discussion
4 between our legislative attorney and the state
5 superintendent. 14:35:29

6 Q. And were the reasons that the Department
7 of Education didn't support H.B. 3293 written down
8 anywhere?

9 A. Not to my knowledge.

10 Q. And were there any memos or other 14:35:41
11 documents prepared that underlie --

12 (Interruption in audio/video.)

13 THE COURT REPORTER: Excuse me. Could you
14 please start over.

15 MS. VEROFF: Of course. 14:35:53

16 BY MS. VEROFF:

17 Q. Were there any documents that capture
18 the -- the reasoning arising at the conclusion
19 that the Department of Education doesn't support
20 the bill? 14:36:02

21 A. No, I don't believe there are any
22 documents for -- for any other bill.

23 Q. And did the Department of Education tell
24 any legislators that it didn't support H.B. 3293?

25 A. Not necessarily. I mean, I don't know 14:36:19

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1 that there -- if there were conversations held
2 between *Sarah* and the legislators.

3	(Interruption in audio/video.)
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4 THE COURT REPORTER: Excuse me.

5	"Between Sara and"?	14:36:36
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6 THE WITNESS: The legislators.

7 BY MS. VEROFF:

8 Q. And did the Department of Education tell
9 any legislative staff that it didn't support H.B.
10 3293? 14:36:48

11 | A. I'm not aware of anything that was said.

12 MS. MORGAN: Julie, hold up just one
13 moment. What I'm going to do is I'm going to move
14 this speaker more in front. That might be -- if
15 you want to move that for a second -- that might be 14:36:57
16 part of why her -- her face is looking at different
17 directions. So it might be -- see if that's any
18 better.

19 THE WITNESS: I'm not in the middle.

20 BY MS. VEROFF: 14:37:11

21 Q. Did the Department of Justice [verbatim]
22 speak with anyone in Governor Justice -- Justice's
23 office about its decision not to support H.B.
24 3293?

25	MS. MORGAN: Department of Justice?	14:37:23
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1 MS. VEROFF: I'm sorry. In Governor --
2 Governor Justice's office.

3 MS. MORGAN: The question was, did the --
4 anyone in the Department of Justice.

5 MS. VEROFF: Sorry. 14:37:34

6 BY MS. VEROFF:

7 Q. Did anyone in the Department of Education
8 speak with anyone in Governor Justice's office
9 about the Department's decision not to support
10 H.B. 3293? 14:37:43

11 A. Not that I'm aware of.

12 Q. And did anyone at the Department of
13 Education ask Governor Justice to veto H.B. 3293?

14 A. Not that I'm aware of, no.

15 Q. And is the Department of Education's 14:37:58
16 current position that it doesn't support H.B.
17 3293?

18 MS. MORGAN: Object to form.

19 THE WITNESS: We -- the Department of
20 Education has to -- we have to follow anything once 14:38:08
21 it is codified and put in statute.

22 BY MS. VEROFF:

23 Q. And does the State Board not support H.B.
24 3293?

25 MS. MORGAN: Object to form. 14:38:21

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1 THE WITNESS: Once it was codified, the
2 State Board is charged with implementing and
3 enforcing.

4 BY MS. VEROFF:

5 Q. How frequently does the Department of 14:38:31
6 Education decide that it doesn't support a bill?

7 A. I could not speak to the frequency. We
8 have a few different options. You know, we --
9 there are ought times when we say ask for a veto.
10 Specifically there are times when we say we don't 14:38:50
11 have a stance. So I'm not sure.

12 Q. In your tenure as deputy superintendent,
13 have you ever seen an Enrolled Bill Review Form
14 besides the one for H.B. 3293 that says that the
15 Department of Education doesn't support a bill? 14:39:01

16 A. This would actually be my first year as --
17 in -- as deputy with a session and for -- I
18 wouldn't have access to those to review prior to
19 them being submitted. And we haven't had any
20 legislation sent to the governor's office yet. 14:39:18

21 Q. I see.

22 And so you weren't in this role when this
23 Enrolled Bill Review Form was passed? Am I
24 understanding that correctly?

25 A. I don't believe so. 14:39:28

1 Q. Got it.

2 And I'd like now for you to look at Item
3 Number 15, so just below where we were looking,
4 which says, "Please identify whether any other
5 state agency should also provide a bill review:" 14:39:45
6 And the answer is "HEPC."

7 Did I read that correctly?

8 A. Yes.

9 Q. What is HEPC?

10 A. It's our Higher Education Policy 14:39:55
11 Commission.

12 Q. And what is the HEPC's relationship to the
13 Department of Education?

14 A. Really the best way to describe it is like
15 a sister agency. It oversees our colleges and 14:40:08
16 current technical centers -- or career and
17 technical -- I'm sorry, career and --

18 (Interruption in audio/video.)

19 THE COURT REPORTER: Excuse me.

20 THE WITNESS: I'm sorry, career and 14:40:17
21 technical community colleges.

22 BY MS. VEROFF:

23 Q. Thank you.

24 And did anyone in the Department of
25 Education have any communication with anyone at 14:40:26

1 HEPC about H.B. 3293?

2 MS. MORGAN: Object to form.

3 THE WITNESS: I'm not aware of any
4 communication.

5 BY MS. VEROFF: 14:40:36

6 Q. And did the superintendent have any
7 communications with anyone at HEPC about H.B.
8 3293?

9 MS. MORGAN: Object to form.

10 THE WITNESS: Not that I'm aware of. 14:40:45

11 BY MS. VEROFF:

12 Q. And why did the Department of Education
13 believe that HEPC should also provide a bill
14 review?

15 A. Because the bill references sports at the 14:40:54
16 college level as well, and so they -- they had
17 oversight over that age of students.

18 Q. And did HEPC actually provide a bill
19 review?

20 A. I don't know if they did or not. 14:41:10

21 MS. VEROFF: And now I'd like to introduce
22 another exhibit. I'll let you know when this is
23 available to you in the Marked Exhibits folder.

24 (Blatt Deposition Exhibit 23 was marked
25 electronically.) 14:41:43

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1 BY MS. VEROFF:

2 Q. You should now see Exhibit 23 in your
3 Marked Exhibits folder. Just let me know when you
4 have it.

5 A. Okay. 14:41:52

6 Q. So this is Bates stamped WVSBOE 000001.
7 It's an e-mail from Sarah Stewart, dated Thursday,
8 July 1st, 2021, to Heather Hutchens. Subject
9 line --

10 THE COURT REPORTER: Could you slow down,
11 please, Counsel.

12 MS. VEROFF: I'm so sorry.

13 BY MS. VEROFF:

14 Q. It's from Sarah Stewart sent Thursday,
15 July 1st, 2021, to Heather Hutchens. The subject 14:42:18
16 line is "fyi."

17 Do you recognize this e-mail?

18 A. Yes.

19 Q. And I'll represent that it was provided by
20 your counsel to plaintiff's counsel as part of 14:42:23
21 discovery production.

22 Did you review this e-mail in preparation
23 for today's deposition?

24 A. I did.

25 Q. And did you review the article that Sarah 14:42:34

1 Stewart links to in the body of the e-mail?

2 A. I did not.

3 Q. Do you know why Sarah Stewart e-mailed
4 this article to Heather Hutchens?

5 MS. MORGAN: Object to form. 14:42:47

6 THE WITNESS: I don't, but I would -- you
7 know, I would assume she was just sharing
8 information on the fact that it had been
9 a MetroNews article. It's not uncommon for
10 anything us to share education -- anything related 14:43:00
11 to education with each other.

12 BY MS. VEROFF:

13 Q. And did Heather Hutchens respond to this
14 e-mail?

15 MS. MORGAN: Heather Hutchens or Sarah 14:43:09
16 Stewart?

17 BY MS. VEROFF:

18 Q. Did Heather Hutchens respond to the
19 e-mail?

20 MS. MORGAN: Object to form. 14:43:16

21 THE WITNESS: I'm not -- I don't know.

22 BY MS. VEROFF:

23 Q. And you mentioned that Sarah Stewart has
24 left the Department of Education.

25 Do you know why she left? 14:43:20

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1 MS. MORGAN: Object to form.

2 THE WITNESS: She took another position --

3 BY MS. VEROFF:

4 Q. And do you know where other position is?

5 (Simultaneous speaking.) 14:43:24

6 (Interruption in audio/video.)

7 A. -- or another job.

8 THE COURT REPORTER: Excuse me. There was
9 speaking over. I didn't get the rest of the
10 answer. 14:43:33

11 THE WITNESS: I said, "She took another
12 job."

13 BY MS. VEROFF:

14 Q. And I'm sorry for interrupting.

15 Do you know where her new job is? 14:43:38

16 A. She works with West Virginia legislature.

17 Q. And do you know what department or
18 committee at the West Virginia legislature?

19 A. She's counsel for the senate president.

20 Q. And who is the senate president? 14:43:59

21 A. Craig Blair.

22 Q. I see.

23 And was Craig Blair the president of the
24 senate at the time that H.B. 3293 was passed?

25 A. Yes, I believe so. 14:44:08

1 Q. Great.

2 And -- and I'm sorry if I didn't ask this
3 earlier.

4 Did you speak with Superintendent Burch in
5 preparing for today's deposition? 14:44:19

6 A. No.

7 Q. No.

8 I just have a few last questions, and I
9 think we can take another break. And this is just
10 about H.B. 3293. 14:44:29

11 Under H.B. 3293, can cisgender girls play
12 on girls' sports teams?

13 A. Sorry. Could you repeat.

14 Q. Of course.

15 Under H.B. 3293, can cisgender girls play 14:44:45
16 on girls' sports teams?

17 A. Yes.

18 Q. Under H.B. 3293, can transgender girls
19 play on girls' sports teams?

20 MS. MORGAN: Object to form. 14:45:00

21 MR. TRYON: This -- this is David Tryon.
22 Objection as to terminology.

23 THE WITNESS: Yes, according to
24 statute they -- or no, according to statute, they
25 cannot. 14:45:09

1 BY MS. VEROFF:

2 Q. Thank you.

3 And under H.B. 3293, can B.P.J., the
4 plaintiff in this case, play on a girls' sports
5 team? 14:45:23

6 A. No. According to this statute, no.

7 Q. And why can't she play on a girls' sports
8 team?

9 MS. MORGAN: Object to form.

10 THE WITNESS: Because the statute would 14:45:32
11 prohibit it.

12 BY MS. VEROFF:

13 Q. If B.P.J. were a cisgender girl, could she
14 play on girls' sports teams under H.B. 3293?

15 MS. MORGAN: Objection to form. 14:45:40

16 THE WITNESS: According --

17 MR. TRYON: Objection.

18 THE WITNESS: According to what I read in
19 the statute, yes.

20 BY MS. VEROFF: 14:45:47

21 Q. Does the State Board believe that H.B.
22 3293 is necessary?

23 MS. MORGAN: Object to form.

24 THE WITNESS: So we've not had an issue in
25 the past is what we've -- we had said from -- you 14:45:59

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1 know, throughout the thing, that it's not been a
2 concern in West Virginia.

3 BY MS. VEROFF:

4 Q. And does the State Board believe that H.B.
5 3293 advances any important government interests? 14:46:10

6 MS. MORGAN: Object to form.

7 THE WITNESS: I'm not aware -- or I mean,
8 I -- not that we're aware of.

9 BY MS. VEROFF:

10 Q. Is it -- so just to confirm, do you mean 14:46:20
11 that you're not aware of whether the State Board
12 thinks that any important government interests are
13 advanced, or do you mean that the State Board does
14 not believe that any important government
15 interests are advanced by H.B. 3293? 14:46:34

16 A. There -- the State Board --

17 MR. TRYON: This is David Tryon.
18 Objection to calls for a legal conclusion.

19 MS. MORGAN: Object form.

20 THE WITNESS: The -- the -- the State 14:46:42
21 Board is not aware if there is or is not a
22 relationship for -- for that.

23 BY MS. VEROFF:

24 Q. Great.

25 MS. VEROFF: So I think at this time, I 14:46:51

1 think I'm -- I'm close to being finished. So I'd
2 like to suggest that we go off the record and take
3 a five-minute break just so I can confer with
4 co-counsel before we wrap up.

5 Does that sound okay to everybody? 14:47:07

6 MS. MORGAN: Okay.

7 MR. TRYON: Yes, I -- I needed some -- a
8 break. Thank you.

9 THE VIDEOGRAPHER: Okay. We're going off
10 the record. The time is 2:47 p.m., and this is the 14:47:15
11 end of Media Unit Number 3.

12 (Short recess taken.)

13 THE VIDEOGRAPHER: We are back on the
14 record at 3:01 p.m., and this is the beginning of
15 Media Unit Number 4. 15:01:42

16 Go ahead.

17 MS. VEROFF: Thank you so much, Ms. Blatt,
18 for your time today. I hope, as indicated, this
19 was a fairly pain-free deposition. And I've
20 reached the end of my questioning. 15:01:54

21 Plaintiff would like to leave today's
22 deposition open in -- in light of potential
23 inadequacy of preparation issues. And also I
24 reserve my rights to ask questions following from
25 any questions asked by the other parties or if 15:02:08

1 there are any changes in the errata.

2 But other than, I am finished, and so will
3 turn it over to counsel for other parties.

4 THE WITNESS: Thank you.

5 MS. MORGAN: Just for a moment, we do not 15:02:19
6 agree to leave this deposition open. You have been
7 allowed full opportunity to ask any questions
8 pursuant to these 12 topics, and she's answered
9 them fully.

10 MS. VEROFF: I'll just add for the record 15:02:31
11 that the witness stated at the beginning of
12 deposition when we were viewing the notice of
13 examination -- or the topics of examination, that
14 there was one topic that she did no preparation
15 for. And the witness also admitted that she didn't 15:02:41
16 speak with any of the individuals featured in the
17 discovery responses.

18 MS. MORGAN: I don't believe that she --

19 MS. VEROFF: Or she --

20 MS. MORGAN: -- actually has testified 15:02:52
21 that she didn't prepare for any topics. May- --
22 there may not have been any documents to review to
23 prepare. But, you know, her testimony is what it
24 is. We're -- we're not agreeing to keep her
25 deposition -- or a deposition of a 30(b)(6) 15:03:08

1 representative open.

2 Does anyone else have any other questions?

3 EXAMINATION

4 BY MS. GREEN:

5 Q. This is Roberta Green, here on behalf of 15:03:24
6 WVSSAC. And, Ms. Blatt, I have a few questions
7 for you. Appreciate your patience.

8 I've heard you testify to some things that
9 referenced Bernie Dolan.

10 Did you confer with Bernie Dolan today -- 15:03:37
11 or prior to your deposition today?

12 A. No.

13 Q. So in terms of who Mr. Dolan communicated
14 with relative to the legislation, would you defer
15 to Mr. Dolan identify those persons for himself? 15:03:54

16 A. Yes, I would.

17 Q. And in terms in your Deposition
18 Exhibit 21, which is the Green Book, at page 23,
19 there's a summary of House Bill 3293 that
20 represents that the West Virginia Board Department 15:04:08
21 of Education contact is Bernie Dolan.

22 Do you recollect that document?

23 A. Yes.

24 Q. And as you sit here, do you understand
25 that Bernie Dolan is not a West Virginia 15:04:18

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1 Department of Education employee?

2 A. I do.

3 Q. And are you aware of whether Mr. Dolan was
4 aware he was listed in the Green Book as the West
5 Virginia Department of Education contact relative 15:04:30
6 to House Bill 3293?

7 A. I'm not aware if he was or not.

8 Q. And in terms of any involvement Mr. Dolan
9 had in preparing the bill summary that's listed in
10 the Green Book at page 23, as you sit here, do you 15:04:44
11 know whether he had involv- -- any involvement at
12 all?

13 A. I do not know if he did.

14 Q. And in terms of whether Mr. Dolan --
15 (Interruption in audio/video.) 15:04:57

16 THE COURT REPORTER: Excuse me. Counsel,
17 there was a cough and an interruption. If you
18 would please start over, please.

19 MS. GREEN: Wow. I don't know. We --
20 well, I could try or maybe something a little 15:05:09
21 different.

22 BY MS. GREEN:

23 Q. So I can't even -- and I don't know
24 whether I asked you whether Mr. -- you know
25 whether Mr. Dolan ever even reviewed this bill 15:05:22

1 summary that's in the Green Book at page 23.

2 A. I don't know that if he did.

3 Q. And I believe you testified that the State
4 Board has no official relationship with WVSSAC; is
5 that true? 15:05:48

6 A. I said the relationship was in that we --
7 the State Board approves the -- the rules for the
8 SSAC.

9 Q. And other than that, no relationship; is
10 that true? 15:05:58

11 A. Yes.

12 Q. So you would defer to WVSSAC to answer its
13 own questions relative to its internal practices
14 and how it proceeds internally; is that true?

15 A. Yes. 15:06:12

16 Q. And you're not a 30(b) witness for SSAC,
17 are you?

18 A. No, I'm not.

19 Q. All right.

20 And in terms of whether SSAC has to comply 15:06:26
21 with State rules, is it actually that the SSAC's
22 member schools or the membership of SSAC has to
23 comply with the State rules? Do --

24 A. Yes, that would be -- that's how I would
25 understand. Our schools would have to comply with 15:06:44

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1 the rules.

2 Q. Okay. Very good.

3 And in terms of the 2.0 rule, I recollect
4 you spoke to the 2.0 rule.

5 Do you recollect that testimony? 15:06:54

6 A. Yes, that that was the only reference to
7 sports participation that's in a State Board
8 policy.

9 Q. All right.

10 And in terms of who actually has a -- 15:07:05

11 (Interruption in audio/video.)

12 THE COURT REPORTER: Excuse me. If you
13 would please start over. There was an interruption
14 in audio.

15 BY MS. GREEN: 15:07:17

16 Q. So in terms of who actually has authority
17 to enforce or waive the 2.0 rule, that would be
18 the State Board; wouldn't it?

19 A. No. That would be the authority of the --
20 enforcement of the 2.0 rule lies with the schools 15:07:35
21 and with the counties, mainly with the schools who
22 are reviewing the -- the records of the students.

23 Q. Okay. And very good point. Thank you for
24 clarifying, not SSAC.

25 SSAC doesn't enforce the State Board's 15:07:49

1 rules; correct?

2 MS. VEROFF: Objection as to counsel
3 testifying.

4 BY MS. GREEN:

5 Q. State -- State Board rule, your one rule; 15:07:59
6 is that true?

7 A. Elig- -- eligibility is determined at the
8 school level.

9 Q. All right.

10 And in terms of -- I think during the 15:08:07
11 pandemic, the State Board had waived or changed
12 compliance with the 2.0 rule, and that was done by
13 the State Board; wasn't it?

14 A. Yes.

15 Q. That's not SSAC doing that with your rule, 15:08:20
16 was it?

17 A. No.

18 Q. And I'm not sure whether I asked you or
19 not -- and maybe counsel will all object and tell
20 me I did. 15:08:38

21 But in terms of any sorts of
22 communications Bernie Dolan had with the
23 legislature or didn't have, any sort of e-mails
24 Bernie Dolan sent, any sort of communication, you
25 would defer to Mr. Dolan to speak for himself, 15:08:50

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1 would you not?

2 A. Yes.

3 Q. Thank you. Appreciate it.

4 A. Thank you.

5 MS. GREEN: No further questions at this 15:08:58
6 time. Thank you, all.

7 MR. TRYON: Ms. Blatt, my name the David
8 Tryon. I don't see my video coming up yet.
9 But anyways, my name is David Tryon, on behalf of
10 the State of West Virginia. Thank you very much 15:09:12
11 for your time today. We have no questions. Thank
12 you.

13 THE WITNESS: Thank you.

14 MS. GREEN: Good afternoon, Ms. Blatt. My
15 name is Susan Deniker. I represent the Harrison 15:09:27
16 County Board of Education and Superintendent
17 Stutler. Thank you for your time today. I do not
18 have any questions.

19 THE WITNESS: Thank you.

20 MS. MORGAN: So I have a few clarifying 15:09:37
21 questions that I would like to ask Ms. Blatt.

22 EXAMINATION

23 BY MS. MORGAN:

24 Q. You were asked about the 2.0 rule, both by
25 plaintiff's counsel as well as counsel for SSAC. 15:09:48

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1 And just want to clarify.

2 That is a -- a rule that was promulgated
3 by the West Virginia Board of Education; correct?

4 A. Yes.

5 Q. And it was -- it is to be implemented, 15:10:01
6 enforced by who?

7 A. By this -- membership schools.

8 Q. Is that similar to what will happen in the
9 future if a rule is promulgated by the Board of
10 Education? 15:10:19

11 A. Yes.

12 MS. VEROFF: Objection as to form.

13 BY MS. MORGAN:

14 Q. Has the State Board of Education ever
15 discussed 3293 at a meeting -- discussed House 15:10:38
16 Bill, that it was codified, 3293, at a board
17 meeting?

18 A. No, they have not.

19 MS. VEROFF: Objection. Asked and
20 answered. 15:10:51

21 BY MS. MORGAN:

22 Q. Have they taken any vote or action?

23 A. No, they have not.

24 Q. Has the department received any complaints
25 about -- 15:11:07

1 MS. VEROFF: Object- --

2 (Simultaneous speaking.)

3 (Interruption in audio/video.)

4 BY MS. MORGAN:

5 Q. -- stu- -- has the State Board of 15:11:12

6 Education or the Department of Education received

7 any complaints by any individuals about

8 transgender athletes participating in sports?

9 A. No, we have not.

10 Q. When -- 15:11:29

11 MS. MORGAN: Let's go off the record just

12 for a moment.

13 THE VIDEOGRAPHER: Okay. We're going off

14 the record. The time is 3:11 p.m.

15 (Off the record.) 15:12:01

16 THE VIDEOGRAPHER: We're back on the

17 record at 3:12 p.m.

18 Go ahead.

19 BY MS. MORGAN:

20 Q. Topic 8 states that it's about "Your 15:12:53

21 Policies, Documents and Communications Concerning

22 the separation of boys and girls in sports in West

23 Virginia prior to and following the passage of

24 H.B. 3293." [As read]

25 Are -- are there any policies, documents 15:13:11

1 or communications regarding that topic?

2 A. No, we do not have any.

3 Q. Did you prepare for that topic to testify
4 here today?

5 A. Just in stating -- reviewing it, we do not 15:13:23
6 have anything that relates to that in a policy.

7 Q. Okay.

8 MS. MORGAN: It's all the questions I
9 have.

10 THE COURT REPORTER: May we go off the 15:13:40
11 record, Counsel?

12 THE WITNESS: Go off the record?

13 MS. MORGAN: If everybody is done, I think
14 we are done here. And she'll read.

15 THE VIDEOGRAPHER: Okay, then. We are off 15:13:52
16 the record at 3:13 p.m. This ends today's test- --
17 testimony given by Michele Blatt.

18 The total number of media used was four,
19 and will be retained by Veritext Legal Solutions.

20 (Proceedings concluded, 3:13 p.m., EST, on
21 February 14, 2022.)
22
23
24
25

JURAT

I, MICHELE BLATT, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken remotely on the 14th day of February, 2022; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this _____ day of _____, 2022,
at _____.

MICHELE BLATT

CERTIFICATE OF REPORTER

I, Hanna Kim, a Certified Shorthand Reporter, do hereby certify:

That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said proceedings were taken before me at the time and place therein set forth and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

I further certify that I am neither counsel for, nor related to, any party to said proceedings, not in anywise interested in the outcome thereof.

Further, that if the foregoing pertains to the original transcript of a deposition in a federal case, before completion of the proceedings, review of the transcript [X] was [] was not requested.

In witness whereof, I have hereunto subscribed my name.

Dated: 3rd day of March, 2022



Hanna Kim, CLR, CSR No. 13083

1 Ms. Michele Blatt

2 mlblatt@k12.wv.us

3 March 3, 2022

4 RE: B.P.J. vs. WEST VIRGINIA STATE BOARD OF EDUCATION

5 February 14, 2022, Michele Blatt (JOB NO. 5079505)

6 The above-referenced transcript has been

7 completed by Veritext Legal Solutions and

8 review of the transcript is being handled as follows:

9 ___ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext
10 to schedule a time to review the original transcript at
11 a Veritext office.

12 ___ Per CA State Code (CCP 2025.520 (a)-(e)) - Locked .PDF
13 Transcript - The witness should review the transcript and
14 make any necessary corrections on the errata pages included
15 below, notating the page and line number of the corrections.
16 The witness should then sign and date the errata and penalty
17 of perjury pages and return the completed pages to all
18 appearing counsel within the period of time determined at
19 the deposition or provided by the Code of Civil Procedure.

20 ___ Waiving the CA Code of Civil Procedure per Stipulation of
21 Counsel - Original transcript to be released for signature
22 as determined at the deposition.

23 ___ Signature Waived - Reading & Signature was waived at the
24 time of the deposition.

25

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1 _X_ Federal R&S Requested (FRCP 30(e)(1)(B)) - Locked .PDF

2 Transcript - The witness should review the transcript and
3 make any necessary corrections on the errata pages included
4 below, notating the page and line number of the corrections.
5 The witness should then sign and date the errata and penalty
6 of perjury pages and return the completed pages to all
7 appearing counsel within the period of time determined at
8 the deposition or provided by the Federal Rules.

9 ___ Federal R&S Not Requested - Reading & Signature was not
10 requested before the completion of the deposition.

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1 B.P.J. vs. WEST VIRGINIA STATE BOARD OF EDUCATION
2 Michele Blatt (JOB NO. 5079505)

3 E R R A T A S H E E T

4 PAGE_____ LINE_____ CHANGE_____

5 _____
6 REASON_____

7 PAGE_____ LINE_____ CHANGE_____

8 _____
9 REASON_____

10 PAGE_____ LINE_____ CHANGE_____

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16 PAGE_____ LINE_____ CHANGE_____

17 _____
18 REASON_____

19 PAGE_____ LINE_____ CHANGE_____

20 _____
21 REASON_____

22 _____
23 _____
24 WITNESS Date

[& - 3293]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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